

No. 11307 *N. 2444*

United States
Circuit Court of Appeals
For the Ninth Circuit.

TONY LEGATOS,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Northern District of California,
Northern Division

FILED

JUN 22 1946

PAUL P. O'BRIEN,
CLERK

No. 11307

United States
Circuit Court of Appeals
For the Ninth Circuit.

TONY LEGATOS,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Northern District of California,
Northern Division

INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	PAGE
Appeal:	
Certificate of Clerk, U. S. District Court, to Record on	27
Notice of	23
Order Granting Motion to Appellant for Admission to Bail Pending	277
Order for Transmittal of Original Reporter's Transcript on	25
Request for Certification of Record on....	26
Statement of Points on Which Appellant Intends to Rely Upon	274
Stipulation for Transfer of Exhibits on...	24
Certificate of Clerk, U. S. District Court to Rec- ord on Appeal	27
Indictment	2
Judgment and Commitment	21
Minutes of Court:	
December 14, 1945, Denying Motion to Dis- miss	5
Jaunary 21, 1946, Denying Motion to Sup- press	9

INDEX	PAGE
Minutes of Court—(Continued)	
April 5, 1946, Denying Motion to Dismiss First Count of Indictment	11
April 9, 1946, Trial	11
April 10, 1946, Trial	12
April 11, 1946, Trial	13
April 12, 1946, Trial	14
April 17, 1946, Sentence	19
Motion to Dismiss and Motion to Make More Certain	4
Motion to Dismiss First Count of Indictment..	10
Motion for Judgment of Acquittal.	16
Motion to Suppress Evidence, Jan. 21, 1946. . . .	29
Names and Addresses of Attorneys	1
Notice of Appeal	23
Order Granting Motion of Appellant for Ad- mission to Bail Pending Appeal	277
Order for Transmittal of Original Reporter's Transcript	25
Petition on Motion to Suppress Evidence.	6
Request for Certificate of Record.	26
Stipulation for Transfer of Exhibits	24
Statement of Points on Which Appellant In- tends to Rely Upon Appeal	274

INDEX	PAGE
Supplemental Transcript of Record	29
Motion to Suppress Evidence	29
Witnesses for Defendant:	
Legatos, Tony	
—direct	35
—cross	36
Maritsas, Chris	
—direct	38
—cross	40
O'Leary, Tommie	
—direct	30
—cross	34
Sanderson, Leonard D.	
—direct	41
—cross	48
Transcript of Record	50
Opening Statement on Behalf of the Gov- ernment	51
Opening Argument on Behalf of the Gov- ernment	216
Defendant's Requested Instructions Re- fused by the Court	236
Charge of the Court	241
Proceedings at Time of Judgment.....	269
Witnesses for the Government:	
Butler Ben H.	
—direct	181

	INDEX	PAGE
Witnesses for the Government—(Cont'd)		
Lewis, Laverne		
—direct	168
—cross	174
—redirect	176
—recross	180
Love, R. F.		
—direct	114
—cross	144
—redirect	166
Sanderson, Leonard D.		
—direct	53
—cross	93, 94
—redirect	99
—recross	100
Tschierschky, Alex		
—direct	101
—cross	107, 109
—redirect	112, 113
Witnesses for Defendants:		
Coghill, Edward Thomas		
—direct	184
Elmer, Frank Raymond		
—direct	211
—cross	212
—redirect	213, 214
—recross	213

INDEX

PAGE

Witnesses for Defendant—(Cont'd)

Holmes, Walton E.

—direct	186
—cross	187
—redirect	193

Legatos, Tony

—direct	204
—cross	209

Maritsas, Chris Andrew

—direct	196, 201
—cross	199, 203

Zoller, George E.

—direct	194
—cross	194

Verdict	16
---------------	----

NAMES AND ADDRESSES OF ATTORNEYS

Attorneys for Appellant:

ANTHONY J. KENNEDY, ESQ.,

Forum Building,

Sacramento 14, California.

JOHN L. BRANNELLY, ESQ.,

Suite 418, Ochsner Building,

Sacramento 14, California.

ERNEST J. TORREGANO, ESQ.,

988 Mills Building,

San Francisco 4, California.

Attorneys for Appellee:

FRANK J. HENNESSY, ESQ.,

U. S. Attorney.

EMMET J. SEAWELL, ESQ.,

Assistant U. S. Attorney,

Sacramento, California.

In the Northern Division of the United States
District Court for the Northern District of
California

No. 9522

UNITED STATES OF AMERICA

vs.

CHRIS ANDREW MARITSAS and TONY
LEGATOS,

Defendants.

FIRST COUNT: (T. 26 U.S.C., Section 2871)

In the October, 1945, term of said Division of said District Court, the Grand Jurors thereof, upon their oaths present: That

Chris Andrew Maritsas and Tony Legatos (hereinafter called "said defendants") on the 18th day of July, 1945, at a place known as "Golden Tavern," located at 621 K Street, in the City of Sacramento, County of Sacramento, State of California, within said Division and District, did wilfully, knowingly and unlawfully re-use liquor bottles, to-wit a total of 31 bottles, as follows:

12 bottles of 4/5 quart capacity of whiskey, bearing the label of Schenley Reserve Blended Whiskey;

2 bottles of 4/5 quart capacity of whiskey, bearing the label of Schenley Reserve Blended Whiskey;

- 3 bottles of 4/5 quart capacity of whiskey, bearing the label of Four Roses, a Blend of Straight Whiskies;
- 2 bottles of 4/5 quart capacity of whiskey, bearing the label of Seagram's Seven Crown Blended Whiskey;
- 2 bottles of 4/5 quart capacity of whiskey, bearing the label of Lord Calvert Blended Whiskey;
- 2 bottles of 4/5 quart capacity of whiskey, bearing the label of Old Charter Straight Whiskey;
- 2 bottles of 4/5 quart capacity of whiskey, bearing the label of Old Forester Straight Whiskey;
- 2 bottles of 4/5 quart capacity of whiskey, bearing the label of Old Hermitage Straight Whiskey;
- 2 bottles of 4/5 quart capacity of whiskey, bearing the label of Seagram's V.O. Blended Whiskey;
- 2 bottles of 4/5 quart capacity of whiskey, bearing the label of Johnnie Walker Black Label Blended Whiskey

in violation of the provisions of Section 175.41 of Regulations 13 prescribed by the Secretary of the Treasury in pursuance of the provisions of Title 26 U.S.C. Section 2871.

SECOND COUNT: (Title 26 U.S.C., Section 2802)

And the said Grand Jurors, upon their oaths, do further present: That at the time and place described in the first count of this indictment said defendants did wilfully, knowingly and unlawfully place distilled spirits in 31 bottles which had been

stamped and filled without destroying the stamp previously affixed to such bottles, said bottles being listed and described in the foregoing first count of this indictment.

FRANK J. HENNESSY,
United States Attorney.

By: /s/ EMMET J. SEAWELL,
Assistant U. S. Attorney.

(Endorsed): A True Bill.
GEO. G. RADCLIFF,
Foreman.

[Filed]: Nov. 29, 1945. [2*]

[Title of Court and Cause.]

MOTION TO DISMISS AND MOTION TO
MAKE MORE CERTAIN

Now comes Chris Andrew Maritsas and Tony Legatos, designated in the indictment as defendants, and move to dismiss the first count of said indictment and quash the same on the grounds that the allegations contained in said first count do not state facts sufficient to constitute a crime against the United States.

2. Said defendants hereby move the court for an order directing the first count of said indictment to be made more certain in the following respects and particulars:

* Page numbering appearing at foot of page of original certified Transcript of Record.

(a) To designate and indicate for what purpose if at all said liquor bottles were unlawfully re-used;

(b) How or in what manner defendant violated, if at all, the provisions of Section 175-41 of Regulations 13 prescribed by the Secretary of the Treasury in pursuance of provisions of Title 26 U.S.C. Sec. 2871.

/s/ JOHN L. BRANNELLY,

/s/ ANTHONY J. KENNEDY,

Attorneys for Defendants.

Points and Authorities: U. S. v. Keitel, 157 Fed. 396.

[Endorsed]: Filed Dec. 14, 1945. [3]

At a stated term of the Northern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City of Sacramento, on Friday, the 14th day of December, in the year of our Lord one thousand nine hundred and forty-five.

Present: The Honorable Martin I. Welsh, District Judge.

[Title of Cause.]

This case came on regularly this day for the entry of the plea of the defendants. The defendants Tony Legatos and Chris Andrew Maritsas were present in Court with Anthony J. Kennedy, Esq., and John L. Brannely, Esq., their attorneys. Emmet J. Seawell, Esq., Assistant U. S. Attorney, was

present for and on behalf of the United States. Mr. Kennedy presented and filed a motion to dismiss and motion to make more definite and certain. After hearing Mr. Kennedy and Mr. Seawell, it is Ordered that the motions be and the same are hereby denied. The defendants were called upon to plead and each defendant thereupon plead Not Guilty of the offenses charged in the Indictment, which said pleas were Ordered entered. The defendants and the attorneys thereupon in open Court demanded a trial by jury. After hearing Mr. Seawell and Mr. Brannely, it is Ordered that this case be and the same is hereby set for January 17, 1946, for trial before a jury. [4]

[Title of District Court and Cause.]

PETITION ON MOTION TO SUPPRESS
EVIDENCE

Comes now Tony Legatos, one of the defendants in the above entitled cause, and shows as follows:

1. In October, 1945, term of this Court, an indictment was returned against defendant and a certain other person named therein, for violating Section 2803 of Title 26 of the United States Code and Regulation 175.41 promulgated under Section 2871 of Title 28 of the United States Code.

2. A plea of Not Guilty was interposed to these charges.

3. Prior to the day this indictment was returned,

and on or about July 18, 1945, there was seized at premises located at 621 K Street, city of Sacramento, County of Sacramento, State of California, within said Division and District, which said premises belonged to and were under the possession and control of this defendant, 31 bottles of liquor then and there the property and possessions of this defendant, which said bottles are more particularly described in the first count of said indictment.

4. This seizure was done by officers of the United States acting without any warrants of arrest or search, who entered into said premises without any authority from this defendant and then conducted a search of the premises and of defendant's property there without any right to do so [5] whatever, following which the officers made the seizures described above.

5. These officers are now withholding this property from defendant and intend to use it as evidence against defendant upon the trial of the matters charged in said indictment.

Therefore, defendant claims that his rights were invaded in the seizure of said 31 bottles of liquor, and defendant prays for the return of said bottles and contents and that said bottles and their contents be suppressed as evidence because of the aforesaid violation of defendant's rights under the provisions of the 4th and 5th Amendments to the Constitution, and defendant particularly prays as follows:

(a) That all said 31 bottles of liquor and their

contents be excluded from the trial upon said indictment and that this Honorable Court now make its order of suppression;

(b) That all said property so seized by trespass be returned to defendant.

Dated at Sacramento, California, January 12, 1946.

/s/ TONY LAGOTOS,
Petitioner. [6]

State of California,
County of Sacramento—ss.

Tony Legatos, being first duly sworn, deposed and says:

That he is one of the defendants in the above entitled action; that he has read the foregoing Petition on Motion to Suppress Evidence and knows the contents thereof; that the same is true of his own knowledge except as to the matters which are therein stated on information or belief, and as to those matters that he believes it to be true.

/s/ TONY LEGATOS

Subscribed and sworn to before me this 12th day of January, 1946.

[Seal]

S. RYPZYNSKI,

Notary Public, Sacramento
County, California

Copy received 1/15/46.

/s/ EMMET J. SEAWELL,
Asst. U. S. Attorney.

[Endorsed]: Filed Jan. 15, 1946. [7]

At a stated term of the Northern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City of Sacramento, on Monday, the 21st day of January, in the year of our Lord one thousand nine hundred and forty-six.

Present: The Honorable Martin I. Welsh, District Judge.

[Title of District Court and Cause.]

This case came on regularly this day for a hearing on the motion to suppress. The defendants Tony Legatos and Chris Maritsas were present in Court with Anthony J. Kennedy, Esq., and John L. Brannely, Esq., their attorneys. Emmet J. Seawell, Esq., Assistant U. S. Attorney, was present for and on behalf of the United States. Mr. Kennedy made a statement to the Court for and on behalf of the defendant. Tommy O'Leary, Tony Legatos, Chris Maritsas and Leonard D. Standerson were sworn and testified for and on behalf of the defendants. After hearing Mr. Kennedy and Mr. Seawell, it is Ordered that the motion to suppress be and the same is hereby Denied, and an exception noted. On motion of Mr. Kennedy and with the consent of Mr. Seawell, it is Ordered that the Secretary of the Treasury or his authorized representative J. H. Maloney, District Supervisor, Alcohol Tax Unit, are hereby directed to give samples of liquor in question to the representatives of the defendants or their attorneys. [8]

[Title of District Court and Cause.]

MOTION TO DISMISS FIRST COUNT OF INDICTMENT UNDER RULE 12, FEDERAL RULES OF CRIMINAL PROCEDURE FOR THE DISTRICT COURTS OF THE UNITED STATES

Now come Chris Andrew Maritsas and Tony Legatos, designated in the indictment as defendants, and move to dismiss the first count of said indictment and quash the same on the ground that said first count does not state a crime or an offense against the United States, for the following reasons:

1. That said count does not designate or indicate for what purpose if at all said liquor bottles were unlawfully used;

2. How or in what manner defendants violated, if at all the provisions of Section 175.41 prescribed by the Secretary of the Treasury in pursuant of the provisions of Title 26, United States Code, Sec. 2871;

3. It is not alleged in said first count of said indictment that the defendants or either of them had actual knowledge of Sec. 175.41 of the regulations of Secretary of the Treasury under the provisions of Title 26 United States Code Sec. 2871 or that said rules and regulations were published in the Federal Register as required by the Federal Register Act 49 Stats. 501, 44 U.S.C. Sections 303-311.

JOHN J. BRANNELLY,
ANTHONY J. KENNEDY,
Attorneys for Defendants.

[Endorsed]: Filed April 4, 1946. [9]

At a stated term of the Northern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City of Sacramento, on Friday, the 5th day of April, in the year of our Lord one thousand nine hundred and forty-six.

Present: The Honorable Martin I. Welsh, District Judge.

[Title of Cause.]

This case came on regularly this day for a hearing on the motion to dismiss the first count of the Indictment. Anthony J. Kennedy, Esq., was present for and on behalf of the defendants. Emmet J. Seawell, Assistant U. S. Attorney, was present for and on behalf of the United States. After hearing Mr. Kennedy and Mr. Seawell, it is Ordered that the motion to dismiss the first count of the Indictment, be and the same is hereby denied. [10]

At a stated term of the Northern Division of the United States District Court for the Northern District of California, held at the Court Room, thereof, in the City of Sacramento, on Tuesday, the 9th day of April, in the year of our Lord one thousand nine hundred and forty-six.

Present: The Honorable Martin I. Welsh, District Judge.

[Title of Cause.]

This case came on regularly this day for trial. The defendant Tony Legatos was present in court

with John L. Brannely, Esq., his attorney. The defendant Chris Maritsas was present in Court with Anthony Kennedy, Esq., his attorney. Thereupon the following named persons, viz: Leonard G. Manser, John M. Feiling, Richard L. Bloss, Nathan M. Sellers, William R. Giorgi, O. Goldblatt, Ida Hansen, Elizabeth Morgan, Leonard M. Flannigan, Ruth M. Dager, Grace Heil, Herbert F. Goodpastor, twelve good and lawful jurors were, after being duly examined under oath, accepted and sworn to try the issues joined herein. Ordered that the further trial hereof be continued until April 10, 1946, and the jury, after being duly admonished by the Court, was excused until that time. [11]

At a stated term of the Northern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City of Sacramento, on Wednesday, the 10th day of April, in the year of our Lord one thousand nine hundred and forty-six.

Present: The Honorable Martin I. Welsh, District Judge.

[Title of Cause.]

The parties hereto and the jury heretofore impaneled herein being present as heretofore, the further trial hereof was thereupon resumed. Mr. Seawell made a statement to the Court and jury for and on behalf of the United States. Leonard D. Sanderson, Alex B. Tschierschky, R. F. Love, La-

verne Lewis and Kenneth H. Butler were sworn and testified for and on behalf of the United States. Mr. Seawell introduced in evidence and filed U. S. Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31 and 32, and the United States rested. Mr. Kennedy and Mr. Brannely made a motion to suppress the evidence, and after hearing Mr. Seawell, Mr. Kennedy and Mr. Brannely, it is Ordered that the motion be and the same is hereby denied. Ordered that this case be continued until April 11, 1946, and the jury, after being duly admonished by the Court, was excused until that time. [12]

At a stated term of the Northern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City of Sacramento, on Thursday, the 11th day of April, in the year of our Lord one thousand nine hundred and forty-six.

Present: The Honorable Martin I. Welsh, District Judge.

[Title of Cause.]

The parties hereto and the jury heretofore impaneled herein being present as heretofore, the further trial hereof was thereupon resumed. Mr. Kennedy on behalf of the defendant Chris Andrew Maritsis made a motion for judgment of acquittal, which said motion was Ordered denied. Mr. Brannely on behalf of the defendant Tony Legatos made

a motion for judgment of acquittal, which said motion was Ordered denied. Edward T. Coghill, Walter E. Holmes, George E. Zoller, Chris A. Maritsis, Tony Legatos and Frank E. Elmer were sworn and testified for and on behalf of the defendants, and the defendant rested. The United States rested. Thereupon the evidence was closed. Mr. Kennedy on behalf of the defendant Chris Andrew Maritsis renewed his motion for judgment of acquittal, which said motion was Ordered denied. Mr. Brannely, on behalf of the defendant Tony Legatos, renewed his motion for judgment of acquittal, which motion was Ordered denied. After argument by the Attorneys to the Court, and Jury, it is Ordered that this case be and the same is hereby continued until April 12, 1946, and the jury, after being duly admonished by the Court, was excused until that time. [13]

At a stated term of the Northern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City of Sacramento, on Friday, the 12th day of April, in the year of our Lord one thousand nine hundred and forty-six.

Present: The Honorable Martin I. Welsh, district Judge.

[Title of Cause.]

The parties hereto and the jury heretofore impaneled herein being present as heretofore, the

further trial hereof was thereupon resumed. After instructions of the Court to the Jury, the Jury at 10:45 o'clock a.m. retired to deliberate upon its verdict. At 2:10 o'clock p.m. the jury returned into Court and on being asked if they had agreed upon a verdict, replied in the negative. After further instructions of the Court to the jury, the jury at 2:15 o'clock p.m. again retired to deliberate upon their verdict. At 4:55 o'clock p.m. the jury returned into Court and on being asked if they had agreed upon a verdict, replied in the negative. After further instructions of the Court to the jury, the jury at 5:00 o'clock p.m. again retired to deliberate upon their verdict. At 5:10 o'clock p.m. the jury returned into Court and on being asked if they had agreed upon a verdict, replied in the affirmative and returned the following verdict, which was Ordered recorded, viz:

“We, the Jury, find as to the defendants at the bar, as follows:

Chris Andrew Maritsis: Guilty on the First Count, Not Guilty on the Second Count.

Tony Legatos: Guilty on the First Count, Not Guilty on the Second Count.

N. M. Sellers, Foreman,”

and the jury, on being asked if said verdict as recorded is the verdict of the jury, each juror replied that it is. Ordered that the jury be excused from the further deliberations hereof, and that they be excused until April 16, 1946. It is further Ordered

that this case be and the same is hereby continued until April 17, 1946, for the matter of the pronouncing of judgment on the defendants hereof. It is further Ordered that the defendant be and they are hereby released on the bonds heretofore given for their appearance herein. It is further Ordered that the U. S. Marshal provide lunch for 12 jurors and two bailiffs. [14]

[Title of District Court and Cause.]

VERDICT

We, the jury, find as to the defendants at the bar, as follows:

Chris Andrew Maritsis: Guilty on the First Count, Not Guilty on the Second Count.

Tony Legatos: Guilty on the First Count, Not Guilty on the Second Count.

N. M. SELLERS,
Foreman.

[Endorsed]: Filed April 12th, 1946. [15]

[Title of District Court and Cause.]

MOTION UNDER RULE 29b FOR RENEWAL OF MOTION FOR JUDGMENT OF AC- QUITTAL, AND IN THE ALTERNATIVE, MOTION FOR NEW TRIAL

Now comes the defendant Tony Legatos, and after motion for judgment of acquittal having been made and denied at the close of all evidence and a verdict

of guilty on the first count having been returned by the jury on April 12, 1946, renews said motion for judgment of acquittal as provided by Rule 29b and in the alternative files this his motion for a new trial, as follows:

The defendant Tony Legatos moves the court to grant him a new trial for the following reasons:

1. The court erred in overruling defendant's motion for dismissal of the first count of the Indictment.

2. The court erred in denying defendant's motion for acquittal made at the conclusion of the evidence.

3. The verdict is contrary to the weight of evidence.

4. The verdict is not supported by any and/or substantial evidence.

5. The court erred in overruling defendant's motion for the suppression of evidence made before trial, said motion being based on illegal search and seizures in violation of the 4th and 5th Amendments to the Constitution of the United States.

6. The court erred in overruling defendant's motion for suppression of evidence made during trial, said motion being based on illegal search and seizures, and in admitting, over opposition, the testimony of witnesses Sanderson, Tschersky and Love based upon such illegal search and seizures.

7. The court erred in admitting the testimony of the [16] witnesses Sanderson and Tschersky of conversations with the defendant Chris Maritsis before proof of the corpus delicti, to which testi-

mony opposition was seasonably made on behalf of defendants and both of them.

8. The court erred in charging the jury, and in refusing to charge the jury as requested in defendants' proposed instructions, and in particular in giving the erroneous instruction to the jury to the general effect that defendant Tony Legatos was bound at his peril for the act of his employee, Chris Maritsis, irrespective of lack of knowledge or intent on the part of Tony Legatos.

9. The defendant was substantially prejudiced and deprived of a fair trial by reason of the following circumstance:

The jury on two occasions requested advice from the court as to the law relative to the criminal liability of an employer for the acts of his employee, and the court refused over the objection of counsel to read any but a single instruction and failed to read instructions previously given by the court which which would have more correctly informed the jury of the necessity of wilful intent upon the part of the employer to violate the law.

Dated: April 15, 1946.

JOHN L. BRANNELLY,

Attorney for Defendant Tony
Legatos.

Copy received April 16, 1946.

EMMET J. SEAWELL,

Asst. U. S. Attorney.

By LORRAINE SOUZA.

[Endorsed]: Filed April 16, 1946. [17]

At a stated term of the Northern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City of Sacramento, on Wednesday, the 17th day of April, in the year of our Lord one thousand nine hundred and forty-six.

Present: The Honorable Martin I. Welsh, District Judge.

[Title of Cause.]

This case came on regularly this day for a hearing on the motions for judgment of acquittal, for a new trial and for the matter of pronouncing judgment on the defendants herein. The defendant Tony Legatos was present in Court with John L. Branely, Esq., his attorney. The defendant Chris Andrew Maritsis was present in Court with Anthony J. Kennedy, Esq., his attorney. Emmet J. Seawell, Esq., Assistant U. S. Attorney, was present for and on behalf of the United States. After hearing Mr. Kennedy and Mr. Seawell, it is Ordered that the motions for judgment of acquittal and for a new trial be and the same are hereby Denied. The defendant Tony Legatos was called for judgment, and having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is By The Court Ordered and Adjudged that the defendant, having been found guilty of said offenses, is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment

for the period of Two (2) Years, and that he pay a fine (to the United States in the sum of One Thousand (\$1000) Dollars on the First Count of the Indictment. It is further Ordered that in default of the payment of said fine, that said defendant be imprisoned until said fine be paid or until he be otherwise discharged by due process of law. Ordered judgment be entered herein accordingly. It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the U. S. Marshal, or other qualified officer, and that the same shall serve as the commitment herein. [18]

At a stated term of the Northern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City of Sacramento, on Wednesday, the 17th day of April, in the year of our Lord one thousand nine hundred and forty-six.

Present: The Honorable Martin I. Welsh, District Judge.

* * * Mr. Brannely made a motion for the Court to reconsider the judgment imposed on the defendant Tony Legatos, and after hearing Mr. Brannely and Mr. Seawell, it is Ordered that the motion to reconsider be and the same is hereby Denied.

District Court of the United States
Northern District of California, Northern Division
No. 9522

UNITED STATES

vs.

TONY LEGATOS.

Criminal Indictment in Two counts for violation
of U.S.C., Title 26, Secs. 2871; 2803.

JUDGMENT AND COMMITMENT

On this 17th day of April, 1946, came the United States Attorney, and the defendant, Tony Legatos, appearing in proper person, and by counsel, and,

The defendant having been convicted on Verdict of Guilty of the offense charged in the 1st ct. of Indictment in the above-entitled cause, to-wit:

On the 18th day of July, 1945, defendant did wilfully, knowingly and unlawfully re-use liquor bottles, and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is By The Court

Ordered and Adjudged that the defendant, having been found guilty of said offenses, is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of Two (2) Years and pay a fine to

the United States in the sum of One Thousand (\$1000.00) Dollars on the first count, and that said defendant be further imprisoned until payment of said fine, or until said defendant is otherwise discharged as provided by law.

(Defendant found Not Guilty on the Second Count.)

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

/s/ MARTIN I. WELSH,

United States District Judge.

Examined by:

HARLAN M. THOMPSON,

Assistant U. S. Attorney.

The Court recommends commitment to United States Penitentiary.

Filed and Entered this 17th day of April, 1946.

/s/ C. W. CALBREATH,

Clerk.

By C. E. EVENSEN,

Deputy Clerk. [20]

[Title of District Court and Cause.]

NOTICE OF APPEAL OF TONY LEGATOS

Name and address of appellant: Tony Legatos,
1040 44th Street, Sacramento, California.

Name and address of appellant's attorneys: John
L. Brannely, Ochsner Building, Sacramento, Cali-
fornia; Anthony J. Kennedy, Forum Building, Sac-
ramento, California.

Offense: Violation of section 175.41 of Regulation
13, Traffic [21] in Containers of Distilled Spirits,
prescribed by the United States Treasury Depart-
ment, Bureau of Internal Revenue, under section
2871 of the Internal Revenue Code.

Verdict of guilty was returned by the jury on
April 12, 1946, and judgment of the court was
entered on April 17, 1946, which by its terms im-
posed a sentence of 2 years imprisonment in the
Federal penitentiary and payment of a fine of
\$1000.00, and that said defendant be further im-
prisoned until said fine is paid or until said defend-
ant is otherwise discharged as provided by law.

Defendant is not on bail and is now confined in
the Sacramento County jail.

I, the above named appellant, hereby appeal to
the United States Circuit Court of Appeals for the
Ninth Circuit, from the above stated judgment.

Dated: April 17, 1946.

TONY LEGATOS,

Defendant and Appellant.

JOHN L. BRANNELLY,

ANTHONY J. KENNEDY,

Attorneys for Defendant and
Appellant.

[Endorsed]: Filed April 17, 1946. [22]

[Title of District Court and Cause.]

STIPULATION FOR ORDER AUTHORIZING
CLERK TO DELIVER EXHIBITS TO CIR-
CUIT COURT OF APPEALS

The United States of America by its Assistant United States Attorney, Emmet J. Seawell, Esq., and the defendant, Tony Legatos, through his attorneys, hereby stipulate that those certain exhibits heretofore offered by the Government in the above entitled proceedings and numbered one (1) to thirty-one (31), being bottles containing alcoholic beverages and offered in evidence in the above entitled proceedings, may be delivered to the Clerk of the Circuit Court of Appeals for the Ninth Circuit for use on the appeal taken thereto by defendant, Tony [23] Legatos, in the event said Circuit Court of Appeals may deem it necessary that such exhibits are required for its determination of the appeal taken by said defendant, Tony Legatos.

Dated : This 8th day of May, 1946.

FRANK J. HENNESSY,
United States Attorney.

By EMMET J. SEAWELL,
Assistant U. S. Attorney.

/s/ JOHN L. BRANNELLY,
/s/ ANTHONY J. KENNEDY,
/s/ ERNEST J. TORREGANO,
Attorneys for said Defendant,
Tony Legatos.

[Endorsed]: Filed May 8, 1946. [24]

[Title of District Court and Cause.]

ORDER DIRECTING CLERK TO TRANSMIT
ORIGINAL REPORTER'S TRANSCRIPT
TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE NINTH
CIRCUIT, TO BE USED ON APPEAL.

Upon the application of Tony Legatos, one of the defendants above named, and it appearing to be a proper case for this order,

It Is Hereby Ordered that the Clerk of the above-entitled Court be and he is hereby authorized, empowered and directed to transmit to the United States Circuit Court of Appeals for the Ninth Circuit the original reporter's transcript and the original supplemental reporter's transcript now on file with the clerk of the above-entitled Court in the above-entitled cause.

Dated: This 14th day of May, 1946.

MARTIN I. WELSH,
Judge of the U. S. District
Court. [25]

APPROVAL BY UNITED STATES
ATTORNEY

The foregoing proposed Order having been presented to the United States Attorney for approval, the same is hereby approved.

Dated: This 14th day of May, 1946.

FRANK J. HENNESSY,
United States Attorney.
By EMMET J. SEAWELL,
Assistant U. S. Attorney.

[Endorsed]: Filed May 14, 1946. [26]

[Title of District Court and Cause.]

REQUEST FOR CERTIFICATION AND FOR
TRANSMITTAL OF RECORD TO THE
UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE NINTH CIRCUIT
TO BE USED ON APPEAL.

To the Honorable, the United States District Court
for the Northern District of California, Northern
Division, and to the Clerk of said Court:

You will please certify and transmit to the Circuit Court of Appeals for the Ninth Circuit the

entire record and proceedings in the above entitled case to be used on the appeal of the defendant, Tony Legatos.

Dated: This 7th day of May, 1946.

/s/ JOHN J. BRANNELLY,

/s/ ANTHONY J. KENNEDY,

/s/ ERNEST J. TORREGANO,

Attorneys for said defendant,
Tony Legatos.

[Endorsed]: Filed May 7, 1946. [27]

CERTIFICATE OF CLERK OF U. S. DISTRICT
COURT TO RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, do hereby certify that the foregoing 27 pages, numbered from 1 to 27, inclusive, contain a full, true and correct transcript of certain records and proceedings in the case of the United States vs. Tony Legatos, No. 9522, as the same now remain on file and of record in this office; said record having been prepared pursuant to and in accordance with the Request for Certification and for Transmittal of Record, a copy of which is embodied herein.

I further certify that the cost of preparing and certifying the foregoing Record on Appeal is the sum of Eleven Dollars and Twenty Cents (\$11.20), and that the same has been paid to me by the attorney for the appellant herein.

In witness whereof, I have hereunto set my hand and the official seal of said District Court, this 16th day of May, A.D., 1946.

[Seal]

C. W. CALBREATH,

Clerk.

By /s/ F. M. LAMPERT,

Deputy Clerk. [28]

In the District Court of the United States for the
Northern District of California, Northern
Division.

No. 9522

Before Honorable Martin I. Welsh, Judge.

UNITED STATES OF AMERICA,
Plaintiff,
vs.

TONY LEGATOS,
Defendant.

REPORTER'S SUPPLEMENTAL
TRANSCRIPT

Appearances: For the Government: Emmet J.
Seawell, Esq., Assistant United States Attorney.
For the Defendant: Anthony J. Kennedy, Esq.,
and John L. Brannely, Esq. [209*]

Monday, January 21, 1946

MOTION TO SUPPRESS EVIDENCE

Mr. Kennedy: Your Honor, this is a motion to
return and suppress evidence. The petition recites
the facts that the indictment was returned against
the defendants, a plea of not guilty was entered,
that prior to the time the indictment was returned,
and on or about July 18, 1945, there was seized at
premises located at 621 K Street, 31 bottles con-

* Page numbering appearing at top of page of original Reporter's
Transcript.

taining liquor, then and there the property of the defendant, Tony Legatos, the bottles of which are described in the indictment; that the seizure was done by the United States, officials of the United States acting without any warrant of arrest or search or other information, who went into the premises without the authority of the owner and conducted a search on the premises without any right to do so whatsoever, following which they made the seizure; that the property is now in the hands of the officers, and we request a return of it.

I don't know to what extent Mr. Seawell, the United States District Attorney, desires to make a showing on the facts, but we will call one witness.

Will you take the stand, please, Mr. O'Leary?

TOMMIE O'LEARY,

called for the defendants, sworn.

Direct Examination

Mr. Kennedy: Q. Will you state your full name, please?

A. Tommie O'Leary.

Q. Will you speak a little louder, please, Tommie?
A. Tommie O'Leary.

Q. Yes. And where do you work?

A. Golden Tavern.

Q. And where is that located?

A. 621 K Street.

Q. And what business is conducted at that place, please?
A. It is a tavern.

(Testimony of Tommy O'Leary.)

Q. On sale of distilled spirits? A. Yes, sir.

Q. And what work do you do there?

A. I am the bartender.

Q. You will have to speak louder all the time, Mr. O'Leary, please. A. Bartender.

Q. And what hours do you work there?

A. From 9:00 to 5:00.

Q. And the place is—so far as its physical equipment is concerned, it is equipped with a bar on the west side, is it not? A. Yes, sir.

Q. And the bar is maybe some thirty feet long?

A. Yes, sir.

Q. And to the rear of the bar, on the north, there are tables? A. Yes, sir. [211]

Q. Do you recognize this gentleman here (indicating)? A. I have seen him before, yes.

Mr. Kennedy: May I have his name, please, Mr. Seawell?

Mr. Seawell: Sanderson.

Mr. Sanderson: Sanderson. Leonard D. Sanderson.

Mr. Kennedy: Yes. Now, did Mr. Sanderson come into the bar on the 18th day of July or thereabouts?

A. Yes, sir.

Q. In company with another gentleman?

A. Yes.

Q. Will you state now for the Court just exactly what they did, please? Tell the Court, please.

A. Well, he came in there and showed me his

(Testimony of Tommy O'Leary.)

badge. He told me he wanted to inspect the liquor in the back, back of the bar. He wanted to go on back, so I let him go.

Q. What did he do?

A. Well, he went back there and started looking all the bottles over.

Q. What else did they do?

A. As they were looking them over he was taking them out——

The Court: Q. Taking them out where?

A. On the table, on the bar.

Q. On the bar?

A. Well, right at the end of the bar, and then he put them on the table later.

Mr. Kennedy: Q. What bottles did they take?

A. He took the ones that were open. I don't know what kinds of whiskey. There were a half dozen different kinds, I guess.

Q. Where were the bottles located that they took?

A. They were on the back bar, on the shelf, display shelf.

Q. You say they took all the bottles?

A. The ones that were open.

Q. What do you mean, all the ones that were open? A. On the back bar.

Q. In other words, all the ones that had the corks open? A. Yes, sir.

Q. And the stamps broken? A. Yes, sir.

Q. Now, how many were there, please, how many men? You say "they." A. Two men.

(Testimony of Tommy O'Leary.)

Q. Someone else was with Mr. Sanderson?

A. Yes, sir.

Q. Now, will you state exactly what Mr. Sanderson said?

A. Well, he didn't say much to me, he just told me he wanted to go by the bar and look at the bottles.

Q. He came in at what time, please, Mr. O'Leary?

A. I don't know exactly what time; I imagine around—it was after—between 9:00 and 10:00, I imagine.

Q. Some time between 9:00 and 10:00 o'clock in the morning?

A. Yes.

Q. And was this other gentleman with him at all times?

A. Well, they were both there, yes, sir.

Q. Both together. And they acted together at all times? [213]

A. Yes.

Q. Now, when they first came in the bar, where did they go? Did they go to the service part of the bar?

A. No, they went around the back end of the bar and showed me their badge and that was all.

Q. That was all they did?

A. Yes.

Q. That is all they said?

A. Yes.

Q. And they proceeded then, you say, to take these bottles out from behind the bar?

A. Well, they went back there and examined them and looked at them and as they looked at them they took them out.

(Testimony of Tommy O'Leary.)

Q. And then what did they do with the bottles, remove them from the place? A. Yes.

Q. Was there anything other than the badge exhibited to you? A. No, sir.

Q. And did they remove from the place every bottle that had been opened?

A. I don't think they took the two bottles I was working with.

Q. In other words, you had two bottles in the slots where you were working and serving drinks?

A. Yes.

Q. —from behind the bar. And the bottles that they took were on the back bar, is that correct?

A. Yes.

Q. And they took every bottle that was open, is that your testimony? A. Yes, sir.

Q. And they first shook them up, you say, and then they [214] removed them from the place?

(No audible response.)

Mr. Kennedy: That is all.

Cross Examination

Mr. Seawell: Q. Just a moment. You are not the manager of this place, are you?

A. No, sir.

Q. You have no control over the operation of this bar? You simply work for Mr. Legatos, isn't that right? A. Yes.

Q. So you wouldn't know if they had authority from Mr. Legatos or from the Manager to search this place or to inspect it, would you?

(Testimony of Tommy O'Leary.)

A. No, I just seen the badge.

Q. I say, you don't know whether they had permission from Mr. Legatos to inspect the premises?

A. No, sir.

Q. You don't know what the law is under the statute as to whether an Internal Revenue Agent has a right under Section 3177 of Revised Statutes to inspect the premises such as these at any reasonable time, do you? A. No, sir.

Mr. Seawell: That is all.

Mr. Kennedy: That is all. Call Mr. Legatos.

.. TONY LEGATOS,

one of the defendants, called for the defendants, sworn.

Direct Examination

Mr. Kennedy: Q. Mr. Legatos, you are the licensee at 621 K Street, are you not?

A. Yes, sir. [215]

Q. And do you know Mr. Sanderson?

A. I see him before. When I come inside I thought I had seen him some place.

Q. You have seen him? A. Yes.

Q. And did you give Mr. Sanderson or his partner—I believe it was Mr. Toschierschey—

The Reporter: How do you spell that?

Mr. Sanderson: T-o-s-c-h-i-e-r-s-c-h-e-y.

Mr. Kennedy: Q. And he is a Revenue Officer, is he not?

(Testimony of Tony Legatos.)

Mr. Seawell: He is no longer with the government. He was at that time.

Mr. Kennedy: Q. Did you give Mr. Sanderson permission to enter your premises and make a search on the morning of July 18th? A. No.

Q. Did you know that he was making that search? A. No.

Q. And the search was done entirely without your knowledge or authority?

A. That is right.

Mr. Kennedy: That is all.

Cross Examination

Mr. Seawell: Q. You say you have a license. What kind of a license? A. On sale license.

Q. To sell what? A. Liquor.

Q. And did you apply under a form with the Federal Government for a stamp to operate your place of business? A. Yes, sir.

Q. You paid a special tax as provided by Sections 3250 to [216] 3275, is that correct, Title 26 of the Internal Revenue Code?

A. I paid the tax.

Q. You paid your special tax, in other words, to operate your business. You are familiar with Section 3277 of Revised Statutes which allows an Internal Revenue Agent to inspect your premises at will, are you not?

Mr. Kennedy: Object to that as calling for a conclusion of the witness on the law.

A. I don't know.

(Testimony of Tony Legatos.)

Mr. Seawell: I am asking him if he knows the law under which he operates his premises?

A. I don't know.

Mr. Seawell: Q. Are you familiar with the Section of the Revised Statutes that allows an Internal Revenue Agent to enter your premises—Section 3177 of Revised Statutes which provides that any Inspector, Collector, Deputy Collector or Internal Revenue Agent may enter in the day time any building or place where any object or objects subject to tax are made or kept within this district wherever it is necessary for the purpose of examining such business? Are you familiar with that?

Mr. Kennedy: Your Honor, I object to that as incompetent, irrelevant and immaterial, and the further objection that as to the law the witness is presumed to know it, but it calls for a conclusion of the witness on the law. If Mr. Seawell wants to turn this into a legal argument, I think it will be better to take it up at the end of the taking of [217] testimony.

Mr. Seawell: Q. Mr. Legatos, did you have a Manager to take care of your place?

A. The manager is Nick Tiodoritus.

Q. And he was working there that day, was he not, the 18th day of July, 1945?

A. He wasn't working that day, he was sick?

Q. He was in the premises, was he not?

A. I don't know if he was in the premises or not.

Q. You don't know actually whether or not the

(Testimony of Tony Legatos.)

agents came in and asked him if they could inspect the premises, do you?

A. I wasn't there myself.

Q. You don't know? A. No.

Q. He had authority to operate the premises?

A. When the manager was there he had the authority. I don't know nothing about the other—

Q. He did have authority to conduct the business when you weren't present?

A. That is right.

Q. What?

The Court: He said that is right.

Mr. Seawell: That is all.

CHRIS MARITSAS,

one of the defendants, called for the defendants, sworn.

Direct Examination

Mr. Kennedy: Q. Your name is Chris Maritsas? [218]

A. Chris Maritsas, yes, sir.

Q. And you are the head bartender down at 621 K Street for Tony Legatos? A. Yes.

Q. And you have general charge and supervision of the place? A. Yes, sir.

Q. And on July 18th of this year were you present when Mr. Sanderson and another agent for the government came into the place?

A. No, I wasn't in there.

(Testimony of Chris Maritsas.)

Q. You weren't there when they first came?

A. No, I wasn't.

Q. As a matter of fact, Tommie O'Leary, the bartender who just testified, was there alone?

A. He was there alone.

Q. It was his shift?

Mr. Seawell: I object as calling for a conclusion. He testified he wasn't there. I don't know how this man would know who was there.

Mr. Kennedy: It may be hearsay. I will put him on if there is any question about that, Mr. Seawell?

Mr. Seawell: He testified he wasn't there. He couldn't possibly know who was there if he wasn't there.

Mr. Kennedy: I will straighten that out. You got in about what time?

A. About 12:00 o'clock, I guess. A little before or a little after; something like that.

Q. And prior to the time you got there they had removed the [219] bottles which we seek the return of?

Mr. Seawell: I object to that as incompetent, irrelevant and immaterial and also hearsay as to this man. He stated he wasn't there.

The Court: Objection is sustained.

Mr. Kennedy: Q. You left the bar the night before, did you not? A. Yes, sir.

Q. And at that time the back bar had approximately how many bottles?

(Testimony of Chris Maritsas.)

A. I never counted. I don't know how many I had in there.

Q. Well, can you give us any idea?

The Court: You have to guess.

A. Oh, about 60 or 70 bottles altogether, both ends, both set-ups.

Q. Now, when you came in the next day, as you say about noon, were there bottles behind the back bar which had been opened, were they gone from the place?

A. I never seen no bottles there when I got there.

Q. Were they gone?

A. Yes, I didn't see them any place around.

Q. Well, they weren't there?

A. No, they wasn't there.

The Court: Q. Did you examine to see if they were there?

A. I didn't examine, but I can see where I get in there there is no bottles in there. [220]

The Court: Proceed.

Mr. Kennedy: Q. Now, did you give anyone permission to enter the premises?

A. No, no, I didn't.

Q. And to take those bottles from there?

A. No.

Q. At any time? A. No, at no time.

Mr. Kennedy: That is all.

Cross Examination

Mr. Seawell: Q. You know Mr. Tiodoritus?

A. Yes.

(Testimony of Chris Maritsas.)

Q. And he is the manager of the place, isn't he?
A. Yes.

Q. And you don't know if he was there on the 18th day of July and gave permission to these men to examine or inspect your place, do you?

A. I came about 12:00 o'clock, I don't know——

Q. You came about 12:00 o'clock, and you weren't there before, were you?
A. No.

Q. And you aren't the manager?

A. Well, when Nick is out——

Q. Mr. Tiodoritus is the manager, isn't he?

A. Yes.

Q. You don't know what happened then before 12:00 o'clock, do you, that 18th day of July, 1945?

A. No, I don't.

Mr. Seawell: That is all.

Mr. Kennedy: That is all. I will call Mr. Sanderson. [221]

LEONARD D. SANDERSON,

called for the defendant, sworn.

Direct Examination

Mr. Kennedy: Q. Your name is Mr. Leonard D. Sanderson?
A. Yes, sir.

Q. And you are investigator for the Alcohol Tax Unit?

A. Inspector for the Alcohol Tax Unit.

Q. Yes. And you were on July 18th of this year?

A. Yes, sir.

(Testimony of Leonard D. Sanderson.)

Q. And on or about that date, together with Mr. —How do you pronounce that?

A. Toschierschey.

Q. Toschierschey? A. Yes, sir.

Q. You went into the premises at 621 K Street?

A. Right.

Q. You had no search warrant?

A. No search warrant, no, sir.

Q. And when you went there you went behind the bar?

A. We presented our credentials to Mr. O'Leary and told him what our mission was, to inspect their stock of bottled spirits.

Q. You told him what?

A. We told him we were there to inspect the stock of bottled spirits in open bottles.

Q. And with that you went to the back bar?

A. Yes.

Q. And you removed every open bottle?

A. No; I would say approximately 40 bottles. We took those to the rear where there were no customers, to a little table, to conduct [222] our inspection, our tests.

Q. And you had no permission from the owner, Mr. Legatos?

A. No, sir. I hadn't seen him.

Q. And it was done without his knowledge?

A. No, I hadn't seen Mr. Legatos.

Q. And you had no permission from Mr. Maritsas?

A. Mr. Maritsas wasn't there at the time. Mr.

(Testimony of Leonard D. Sanderson.)

Tiodoritus was there during all our inspection. He was the manager.

Q. Was he there when you went in?

A. No.

Q. What time did he come in?

A. He came in fifteen minutes after we entered the premises.

Q. How long was he there, please?

A. He was there all during the time of our inspection.

Q. Was he there when you took the bottles from behind the bar?

A. Yes, sir.

Q. All the time?

A. Yes, sir.

Q. And did you have any conversation with him?

A. Yes. After we had discovered there were 32 refilled bottles, and he was present all during the inspection, and we asked him if he had any knowledge as to how those bottled spirits got that way and he had absolutely no knowledge.

Q. About what time did he come?

A. We went in about 10:00 o'clock and I should judge about 10:15 or 10:20 Mr. Tiodoritus came in.

Q. What had you done before Mr. Tiodoritus came in? [223]

A. We had taken the bottles to the table in the rear.

Q. And you were doing what?

A. Testing with a Williams' testing set.

Q. What is the Williams' testing set?

A. It is a field equipment we have to test bot-

(Testimony of Leonard D. Sanderson.)

tled spirits before we take them into the Bureau chemist.

Q. And you had completed your test before Mr. Tiodoritus came in?

A. No, sir, not completed it.

Q. How far had you proceeded with it?

A. I should judge we had checked a few bottles and found out that the contents did not conform to the labels.

Q. Mr. Tiodoritus was there how long?

A. We were there, I should judge, about three hours, three hours and a half.

Q. And he was there all that time?

A. Yes, sir.

Q. What was your conversation with Mr. Tiodoritus?

A. Well, when we found a bottle that the contents did not conform with the label, why, we showed him the test and asked him if he knew anything about how they got that way and he said he had been home sick, home ill and could not explain how the contents got that way.

Q. Did you know Mr. Tiodoritus before that time?

A. No, sir, I had never seen him.

Q. And he came in after you had removed the bottles from the back bar?

A. From the back bar to a table [224] in the rear of the bar.

Q. And you discovered what in the bottles, please?

(Testimony of Leonard D. Sanderson.)

A. Well, of the 32 bottles we had removed, of the 32 there were 14 bottles that had been filled with parts of rum and Schenleys and Mr. Maritsas came in the next day——

Q. Parts of what?

A. Rum and Schenleys.

Q. Schenley's?

A. Schenley's blended whiskey and rum, 14 bottles. Mr. Maritsas came in the next day and we asked him about the bottles, how they got that way——

Q. What day, please?

A. That would be the 19th.

Q. The next day?

A. Yes. And he said he had refilled 14 bottles himself personally with parts of rum and Schenley's blended whiskey, and the other 18 bottles he said the bartenders were dumping those from one bottle to the other at the end of the day's business. If they had a small portion in the bottle they would put them together.

Q. This was on the 19th?

A. This was on the 19th. Mr. Legatos was present also.

Q. Now, going back to July the 18th, the day you made your search, did you have instruments insofar as that Williams' test is concerned?

A. Yes, sir. We have a re-agent and a small tube about a foot high or long, I should say, where we conduct our tests.

(Testimony of Leonard D. Sanderson.)

Q. When you first went in there you showed your badge of authority to Tom O'Leary? [225]

A. Showed our credentials, yes.

Q. And then you went back of the bar and took the open bottles out? A. That is right.

Q. Other than the bottles he had in the slots at the time? A. Yes, that is right.

Q. And took those in the back part of the bar—not on the far end of the bar, but in the rear of the bar on a table? A. Yes.

Q. And sat down and made tests? A. Yes.

Q. And from the tests you made you drew your conclusion that there were substances in the bottle that were other than on the brands? A. Yes.

Q. Then Mr. Tiodoritus came in? A. Yes.

Q. Now, let me have the conversation with Mr. Tiodoritus, please?

A. Mr. Tiodoritus was down in the basement working on some invoices when we were working on the tests, and as soon as we found a bottle that was bad we would take the bottle down to him and showed him the tests and he could not explain it because he said he was home ill.

Q. Was that the entire conversation you had with Mr. Tiodoritus? A. Yes, sir.

Q. That was the only conversation you had with him? A. Yes.

Q. Now, just to refresh your recollection as to whether Mr. [226] Tiodoritus was or was not there, isn't it a fact that after you made your examination, Mr. Sanderson, of these bottles, that you asked

(Testimony of Leonard D. Sanderson.)

Mr. Tommie O'Leary, the bartender, where the other liquor was kept?

Mr. Seawell: Just a moment. I object to this as cross examination of his own witness.

The Court: Sustained.

Mr. Kennedy: I don't believe that question is objectionable, your Honor.

The Court: The Court has ruled.

Mr. Kennedy: Pardon me?

The Court: I say the Court has ruled.

Mr. Kennedy: Q. Now, did you inspect the liquor room?

A. Yes, sir,—the stock room?

Q. Yes? A. Yes.

Q. And you requested Mr. Tommie O'Leary for the keys? A. I don't recall that.

Q. But he did show you the beer room, didn't he? A. Yes, sir.

Q. And he told you he didn't have the keys to the liquor room? A. Yes, sir.

Mr. Seawell: Just a moment. This is your witness, Mr. Kennedy. You are going at him like you are cross-examining him. Ask him questions and let him answer.

Mr. Kennedy: I have asked him questions. [227]

Mr. Seawell: Will you read that last question, Mr. Reporter?

(Record read.)

Mr. Kennedy: The question has already been answered.

The Court: It has been answered.

(Testimony of Leonard D. Sanderson.)

Mr. Kennedy: Q. So it was necessary to wait for Mr. Tiotoritus to come down and get the keys to the liquor room? A. That is right.

Q. And that was some time later?

A. I should judge about 10:30. We entered the premises about 10:00 o'clock and about 10:30 we got the keys.

Q. Yes, but after your preliminary inspection had been completed?

A. The inspection was not completed. It takes three hours to complete the inspection.

Mr. Kennedy: That is all.

Cross Examination

Mr. Seawell: Q. You are Inspector for the United States Bureau of Internal Revenue, is that correct?

A. Yes, sir.

Q. What does your authority consist of insofar as going into bars where distilled spirits are sold?

Mr. Brannely: Your Honor, that is objected to as calling for a conclusion of the witness on a question of law. That is a question of law.

Mr. Seawell: May it please the Court, I have a right [228] to ask him——

The Court: Overruled.

Mr. Seawell: Q. What authority did you have to go into these premises?

A. Well, we make routine inspections, periodic inspections of various bars, maybe once every six months or three months we go into a bar and in-

(Testimony of Leonard D. Sanderson.)

spect it for revenue stamps, wine stamps, bootleg whiskey—well, there are many things we inspect—license—to see if the licenses are up to date.

Q. Well, who instructs you to do this?

A. Well, we get our instructions from our Inspector, Chief Inspector.

Q. From the Department of Internal Revenue?

A. From the Department of Internal Revenue.

Q. And did you inspect these premises that you went into—

A. 621 K Street.

Q. —that you refer to? A. Yes, sir.

Q. Did anyone object to the search?

A. No, sir.

Q. And did the manager request you to leave the premises? A. No, sir.

Q. And did you use any force or duress in inspecting these premises? A. Absolutely not.

Mr. Seawell: That is all.

Mr. Kennedy: That is all.

Mr. Seawell: Are you through? [229]

Mr. Kennedy: Yes.

(Argument.)

The Court: Motion submitted?

Mr. Seawell: Motion submitted.

The Court: Motion denied.

Mr. Kennedy: May an exception be noted?

The Court: Yes. [230]

In the District Court of the United States, for the
Northern District of California, Northern
Division

Before Honorable Martin I. Welsh, Judge.

No. 9522

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TONY LEGATOS and

CHRIS ANDREW MARITSAS,

Defendants.

REPORTER'S TRANSCRIPT

Appearances: For the Government: Emmet J. Seawell, Esq., Assistant United States Attorney. For the Defendant: Tony Legatos: John L. Branely, Esq. For the Defendant: Christ Andrew Maritsas: Anthony J. Kennedy, Esq. [1]

Tuesday, April 9, 1946, 10:00 o'clock a.m.

(A jury was duly impaneled and sworn to try the case.)

(Thereupon adjournment was taken until Wednesday, April 10, 1945, at 10:00 o'clock a.m.) [4]

Wednesday, April 10, 1946, 10:00 o'clock a.m.

The Clerk: United States vs. Tony Legatos and Chris Maritsas.

Mr. Seawell: Ready.

Mr. Brannely: Ready, your Honor.

Mr. Kennedy: Ready.

The Court: Call the roll of jurors.

(Roll called.)

The Clerk: They are all present, sir.

The Court: You may proceed.

OPENING STATEMENT ON BEHALF OF THE GOVERNMENT

Mr. Seawell: Counsel, may it please the Court, ladies and gentlemen of the jury:

The Government intends to prove in this case that on or about the 17th day of July, 1945, two Alcohol Tax Unit Agents in the performance of their duties went to a bar which is owned and operated by Mr. Tony Legatos, six hundred something K Street; that as they went into the bar it was after 10:00 o'clock in the morning; that they asked the bartender—told him what their duties were—to look at the license and a routine check-up, to check up their liquor to see if it came up to the standards prescribed by law; that the bartender [5] told them to go ahead; that they went ahead and examined the bottles which were open and setting behind the bar and around and about the premises; that they examined these bottles, tested them, and came to the conclusion that at least thirty odd bottles had

been adulterated—that is, that either caramel or other substances had been added to straight whiskey; that in the case of 14 bottles of Schenley's whiskey, rum had been added; that in the case of 8 bottles of straight whiskey—whiskey such as Old Forester, et cetera—the proof was not 100 proof, apparently some substance had been added.

The Government will prove that the agents seized these thirty-odd bottles that we will submit in evidence later in this case, and that they later submitted them to the United States chemist, Mr. Love, who has been a chemist in the United States Government for some twenty-odd years; that he made the recognized tests and found in each case that the bottles contained substances that could not be in them—that in 18 cases rum had been added to the whiskey, and in the other bottles caramel or some substance had been added to make it taste and look like straight whiskey when in fact it wasn't.

The Government will prove that as a matter of fact the defendant, Christ Maritsas, was not present at that time, however, they stated they would come back the next morning and told the bartender and requested he have the manager there. [6]

The next morning the agents went back, and at that time the defendant, Chris Maritsas, was present, and also Mr. Tony Legatos.

In other words, we will show that he immediately came down and saw something was wrong, and at that time Chris admitted that he had actually filled 14 of these bottles with rum, and as a matter of fact

I will prove that he has admitted it several times, even before the United States Commissioner.

We will prove, as a matter of fact that Tony Legatos owns a number of bars in Sacramento and Vallejo; that he had an over-stock of rum; that he had some fifty-odd cases of rum in one of his places of business; that he—we will prove it from his secretary—that he directed that that rum be disposed of. He said, “I have too much rum; I can’t afford to keep it; we will have to dispose of it in some way.”

And thereafter this rum was added to the bottles of whiskey which he sold as straight whiskey, and for which the people paid their good money and received a product not as represented.

Mr. Sanderson, will you take the stand? [7]

LEONARD D. SANDERSON,

called for the Government; sworn.

Direct Examination

Mr. Seawell: Q. What is your occupation?

A. I am Inspector for the Bureau of Internal Revenue, Alcohol Tax Unit.

Q. How long have you been so employed?

A. Two years.

Q. And were you so employed on the 17th and 18th days of July and thereabouts?

A. Yes, sir.

(Testimony of Leonard D. Sanderson.)

Q. 1945. Did you have occasion to visit Sacramento around about that time? A. Yes, sir.

Q. And did anyone accompany you to Sacramento?

A. Yes, sir, Inspector A. G. Tschierschky.

Q. And did you visit any bars on that occasion? A. Yes.

Q. Particularly, did you visit a place known as the Golden Tavern at 621 K Street, Sacramento?

A. Yes, sir.

Q. And when did you go to that bar?

A. Approximately 10:00 A.M. on July 18, 1945.

Q. And who was with you?

A. Inspector Tschierschky.

Q. And how did you gain entrance to the bar?

A. The doors were open and there were people sitting at the bar drinking and we walked in and presented our credentials to a bartender by the name of Tommy O'Leary. [8]

Q. Was there anyone else in authority present at that time, any bartenders?

A. Not at that time. There was a bartender there, but he wasn't on duty.

Q. He wasn't working? A. No.

Q. What did you say to the bartender, and what did he say to you?

Mr. Brannely: Objected to as hearsay, your Honor, incompetent, irrelevant and immaterial.

Mr. Kennedy: Same objection as to the defendant Maritsas.

(Testimony of Leonard D. Sanderson.)

Mr. Seawell: It simply goes to the search and visit.

Q. At any event, after you did present your credentials to the bartender, what did you do?

A. We told the bartender what our mission was.

Mr. Kennedy: Pardon me, your Honor. May this statement as to the bartender go out? This witness on the stand is a government agent of years' experience, and he knows what is testimony. He was asked what he did. Let him state the facts.

The Court: Overruled. Proceed.

A. Inspector Tschierschky and I went behind the back bar and we removed, after inspection, various bottles. We removed approximately forty bottles and took them to the rear booth.

Q. Why did you remove those bottles?

A. We suspected them of having been refilled.

Mr. Kennedy: Just a moment. We ask that that go out and the——

Mr. Seawell: That may go out.

Q. Just state what was your purpose in removing the bottles.

A. These bottles were being tested by the Williams Alcohol Test Set.

Q. You were going to test these bottles?

A. Yes.

Q. Did you have equipment to make such a test with you? A. Yes, sir.

Q. And what did you do with those bottles, where did you take them?

A. To a rear booth at the rear table.

(Testimony of Leonard D. Sanderson.)

Q. What did you do?

A. We took the Williams Test Set to the 40 bottles that had been removed.

Q. What is the Williams Test Set?

A. The Williams Test Set is a field equipment we have which will show whether blended spirits has been put in straight whiskey or the bottle has been diluted with water or liquids other than whiskey have been put in the bottle.

Q. You applied that test to these 40 bottles you mentioned?

A. Yes.

Q. And what was the result of the test?

Mr. Kennedy: Objected to as incompetent, irrelevant and immaterial, calling for a conclusion of the witness. The Williams Test has not been identified except on the word of [10] the witness. We have no idea what it is at all.

Mr. Seawell: Q. How did you happen to apply the Williams Test?

A. I had a Williams Test Set with me.

Q. Where did you obtain it?

A. This came from the Chemical Laboratory of the Bureau of Internal Revenue in San Francisco.

Q. What is the purpose of this test?

Mr. Brannely: That calls for a conclusion of the witness.

The Court: If he knows.

Mr. Seawell: Q. Yes, if you know.

The Witness: What is the question, please?

Mr. Seawell: Q. Do you know what this test

(Testimony of Leonard D. Sanderson.)

is used for? In other words, what do you use this to test, what products?

A. Distilled spirits.

Q. And how do you tell whether or not—for example, if you took a Schenley bottle—I will withdraw the question at this time. First I will show you a number of bottles. I will show you this case which is sealed, which I just opened, and ask you if you can recognize this case.

A. Yes, sir.

Q. How do you recognize it?

A. By the seal it has on top of the case principally, and signed by Dr. Love.

Q. In your presence?

A. In my presence.

Q. Now I will ask you to open that case and take out the bottles in that case, and ask you if you have ever seen [11] these bottles before. Take out one at a time.

A. Yes, sir, I have.

Q. You have handed me here a bottle of Schenley Reserve blended whiskey. Where did you see that bottle the first time?

A. In the back bar of Tony Legatos' bar, 621 K Street.

Q. How do you recognize that bottle?

A. By my initials and Mr. Tierscheschky's initials on one side and Mr. Theodoratus' initials on the other side.

Mr. Seawell: At this time I will offer for identification as Government's Exhibit 1 the bottle of Schenley Reserve blended whiskey identified by

(Testimony of Leonard D. Sanderson.)

the witness—it has a number on it, 149425—as Government's Exhibit number 1.

The Court: Admitted.

(The bottle referred to was marked U. S. Exhibit 1 for identification.)

Mr. Seawell: Q. All right, will you proceed to take out the rest of the bottles? Here is a bottle with the number 149424 on it. Where did you see that bottle before?

A. In the back bar of Tony Legatos' bar at 621 K Street, Sacramento.

Q. How do you recognize that bottle?

A. By my initials on one side and Mr. Theodoratus' initials on the other side and strip stamps.

Mr. Seawell: At this time I offer this bottle as [12] Government's exhibit for identification number 2.

Mr. Kennedy: Your Honor, we have an objection as soon as the motion proceeds a little further upon what Mr. Sanderson did. Just in the interest of time, if Mr. Seawell could restrict himself to one bottle and go on with the alleged search and seizure that he conducted, I think we will proceed a lot faster.

Mr. Seawell: I will proceed in the ordinary course, may it please the Court.

Mr. Kennedy: Then, your Honor, at this time, exercising our rights as to the defendants Legatos and Chris Maritsas, may we ask some preliminary questions of the agent as to the type of investigation he made?

(Testimony of Leonard D. Sanderson.)

The Court: When your time comes, you may do that.

Mr. Kennedy: Pardon me, your Honor?

The Court: When your time comes, you may do that.

Mr. Kennedy: Your Honor, I believe we have the right on the question of search and seizure to ask preliminary questions before the evidence is offered,—before the material is offered in evidence, so that we may lay our proper foundation.

Mr. Seawell: It has not been offered in evidence.

Mr. Kennedy: Or for identification.

Mr. Seawell: It has only been offered for identification. I have no objection if he wants to ask the agent any question [13] at this time—in regard to search and seizure, is that correct?

Mr. Kennedy: That is correct.

Mr. Seawell: Proceed.

Mr. Kenndy: Q. Now, Mr. Sanderson, you didn't have a warrant? A. No, sir.

Q. Of any kind? A. No, sir.

Q. And you went there without a warrant absolutely, and you went into the bar and just took a look behind the bar first? A. No, sir.

Q. What did you do first, sir?

A. We presented our credentials to the man in charge, who was Mr. Tom O'Leary.

Q. Yes. And how long is the bar, please?

A. How long?

Mr. Seawell: I object to that as incompetent,

(Testimony of Leonard D. Sanderson.)

irrelevant and immaterial and no bearing on the search and seizure how long the bar is.

Mr. Kennedy: Q. The bar is about thirty feet long, is it not?

Mr. Seawell: Oh, I object to Mr. Kennedy testifying, may it please the Court.

The Court: Ask questions.

Mr. Kennedy: I beg your pardon?

The Court: Ask questions.

Mr. Kennedy: I was asking how long the bar was.

Mr. Seawell: I object to that as incompetent, irrelevant [14] and immaterial.

The Court: Sustained.

Mr. Kennedy: And, after you presented you credentials, what did you do?

A. We went behind the back bar and checked over the licenses first, went behind the back bar and there were 40 bottles in the back bar.

Q. And you took them out from behind the bar and put them where?

A. A small table in a booth at the rear of the bar.

Q. You aren't a chemist, are you?

A. I am not.

Q. And you have no technical training in these things? A. I have not.

Q. And the so-called Williams Test, the only thing you know about that is what is written in the circular that the company dispenses?

A. We have no circular on the Williams Test

(Testimony of Leonard D. Sanderson.)

Set. We go through a schooling in San Francisco and pass an examination on refilled bottles and taxes and various rules and regulations of the Bureau of Internal Revenue, before we are sent into the field.

Q. Yes, according to the instructions of the company? That is, the manufacturer of the instrument known as the Williams Test, isn't that correct?

A. I have never seen any directions. The inspectors receive their instruction from Dr. Love in his laboratory in San [15] Francisco.

Q. Now the Williams Test consists of—the so-called Williams equipment is a tube, is it not, a graduated tube? A. That is right.

Q. Along with a chemical compound that you use in connection with distilled spirits?

A. That is right.

Q. And in order to use the Williams test it is necessary to take from a bottle a portion of the material that is in the bottle, put it in the tube and rinse out the tube, is that not correct?

A. That is correct.

Q. And you throw that away?

A. That is right.

Q. Then you take some more of the——

Mr. Seawell: I am going to object to this as outside of the search and seizure. I thought Mr. Kennedy was going to examine this man at this time on search and seizure. He is talking about a chemical analysis.

(Testimony of Leonard D. Sanderson.)

Mr. Kennedy: The matter of search and seizure, Mr. Seawell, boils down to this: That this man took some material out of a bottle, put it in a test tube, rinse out the test tube and threw it away. Now what right a government agent has to do that I don't know. As a matter of fact, it is illegal——

Mr. Seawell: It is not illegal. I will refer to the United States Code——

Mr. Kennedy: May I complete my examination, your Honor? [16]

Mr. Seawell: Just a moment, You asked me a question, Mr. Kennedy. I don't want to leave an erroneous impression with the jury, may it please the Court.

There is a specific section of the United States Code which allows inspectors, revenue agents, such as Mr. Sanderson, to go into a bar and inspect it for the safety of the public and see whether or not the liquor in these places is as advertised and stated on the labels, and further gives them the authority to check for stamps, licenses, et cetera. I have a long brief on that and many cases to support it.

Mr. Kennedy: As far as the safety of the public is concerned, the 21st Amendment turns over to the States the entire matter of police power and regulation on alcoholic beverages, leaving to the Internal Revenue Department the matter of taxes.

Mr. Seawell: May I be excused just one mo-

(Testimony of Leonard D. Sanderson.)

ment, may it please the Court? I left my authorities in the other room.

(Mr. Seawell leaves the court room and returns.)

Mr. Seawell: May it please the Court, Section 3600 of the Internal Revenue Code reads as follows:

“Every collector shall, from time to time, cause his deputies to proceed through every part of his district and inquire after and concerning all persons therein who are liable to pay any internal revenue tax, and all persons owning or having the care and management [17] of any objects liable to pay any tax, and to make a list of such persons and enumerate said objects.”

Section 3170 of the Internal Revenue Code reads as follows:

“The secretary is authorized to confer and impose upon the Commissioner and any of his assistants, agents, or employees, and upon any other officer, employee or agent of the Treasury Department, any of the rights, privileges, powers, duties and protection conferred or imposed upon the secretary, or any officer or individual of the Treasury Department, or by any law now or hereafter in force relating to the taxation, exportation, transportation, manufacture, possession or use of, or traffic in, distilled spirits, wine, fermented liquors, or denatured alcohol.”

Now Section 3601(a)1 reads as follows:

“1. Entry during day. Any collector, deputy

(Testimony of Leonard D. Sanderson.)
collector, internal revenue agent, or inspector, may enter, in the daytime”—as here—“any building or place where any articles subject to tax are made, produced, or kept”—and he testified they were kept—“within his district so far as it may be necessary for the purpose of examining said articles or objects.”

I think that is certainly clear so far as the authority for the Internal Revenue agents to go into this place.

Mr. Kennedy: Was that last Section cited Section 3601? There is no Section 3601——

Mr. Seawell: Section 3601(a)1. [18]

The Government submits this man had authority to go into the place, may it please the Court——

Mr. Kennedy: Your Honor, I hadn't completed my examination.

Q. So far as the Williams Test is concerned, then, you took a portion out of the bottle, put it in a tube, and threw it out?

Mr. Seawell: I am going to object to this. It is not in regard to the search and seizure. This was preliminary to one purpose, if there was any illegal search and seizure. Now he is talking about the chemical analysis.

The Court: Go ahead; proceed.

Mr. Kennedy: Will you answer the question?

The Court: No. Mr. Seawell, you go ahead.

Mr. Seawell: You sustained the objection to going into this line of testimony at this time?

The Court: Yes.

(Testimony of Leonard D. Sanderson.)

Mr. Kennedy: Your Honor, I haven't made my motion for suppression, I haven't argued the matter. May I give you the points and authorities?

The Court: You don't have to do that. Just get along. You will have your time. Mr. Seawell has his time now and you will have your time. All you have to do is make a motion.

Mr. Kennedy: At this time I move that any evidence relative to the search and seizure made by Mr. Sanderson be [19] excluded from the case on the ground that it was in contravention of defendant's rights under the 4th and 5th Amendments of the Constitution and not pursuant to any provisions of the Internal Revenue laws.

That is, the sections cited by Mr. Seawell don't give any right to take anything whatsoever from any bottle in the aid of making any inspection or search, but that the sole authority of the officers of the Internal Revenue Department or the Alcohol Tax Unit under the sections of the law cited by Mr. Seawell, according to judicial decisions, the memorandum of which has already been filed with the Court, is to look in to see—in other words, to count and to look. And they have no right to take anything from a bottle whatsoever.

Mr. Brannely: Your Honor, before your Honor rules on the motion, in order to protect the record, I would like to join in the motion on behalf of the defendant, Mr. Tony Legatos, the motion just made by Mr. Kennedy to suppress the evidence, on the ground of illegal search and seizure.

(Testimony of Leonard D. Sanderson.)

On behalf of the defendant, Mr. Legatos here, your Honor, I think the evidence clearly shows that his property was taken without a search warrant, that he gave no one permission to take that property, that he wasn't present at the time the property was taken, that no search warrant has been obtained by the officers who made the illegal search and [20] seizure, and I want, on behalf of my client, Mr. Legatos, to join in that motion, your Honor, to suppress that evidence.

Mr. Seawell: Of course, that is not necessary, may it please the Court. This is a man working under a license. Where you have a license the situation is different. The United States Congress has provided how far the agent may go in examining the records and enforcing the law.

The Court: Take a short recess. Ladies and gentlemen, we will recess for a short time. Please remember the admonition heretofore given you by the Court.

(The jury retired.)

Mr. Seawell: If your Honor is going to take this matter under advisement, I have a brief I would like to submit on the situation.

(Recess.)

The Court: Call the roll of jurors.

(Roll called.)

The Clerk: They are all present, sir.

The Court: The motion of defendants to suppress evidence is denied.

(Testimony of Leonard D. Sanderson.)

Mr. Seawell: Q. Mr. Sanderson, I believe when we started arguing about the suppression of evidence, we had proceeded to the point where you had gone into the establishment. Did you say you looked at—did you check the stamps and licenses when you went in? A. Yes, sir. [21]

Q. And who owns these premises?

A. Tony Legatos.

Q. He is a licensee?

A. A licensee, both Federal and State licenses.

Q. You then took some 40 bottles to the rear of the room, is that correct?

A. That is correct.

Q. And I had introduced one bottle of Schenley's Reserve blended whiskey as Government's Exhibit 1 for identification, and I had showed you the second bottle. A. Yes, sir.

Q. Did you desire to look at these?

Mr. Brannely: No.

Mr. Seawell: I will offer this bottle if Schenley's Reserve whiskey as Government's Exhibit 2 for identification.

(The bottle referred to was marked U. S. Exhibit 2 for identification.)

Mr. Seawell: Q. Now did you take another bottle of liquor from the same place?

(The witness produces a bottle.)

Q. You have handed me a bottle of Schenley's whiskey with a number 149426 on it? A. Yes.

Q. Did you ever see this bottle before?

(Testimony of Leonard D. Sanderson.)

A. I did.

Q. Where did you see the bottle before?

A. At Mr. Tony Legatos' bar at 621 K Street, Sacramento.

Q. How do you recognize the bottle?

A. By Mr. Tschierschky's and my initials on one side, and Mr. Theodoratus' initials on the other side of the bottle seal. [22]

Mr. Seawell: I will offer this as Government's Exhibit next in order for identification.

(The bottle of whiskey referred to was marked Government's Exhibit 3 for identification.)

Mr. Seawell: Q. Did you seize another bottle at that time?

(The witness produces a bottle of whiskey.)

Q. You have handed me another bottle of Schenley's whiskey with the number 149421 on it?

A. Yes.

Q. Do you recognize this bottle? A. Yes.

Q. Where did you see the bottle the first time?

A. At the same establishment.

Q. Tony Legatos' bar?

A. Tony Legatos' bar at 621 K Street, Sacramento.

Q. How do you recognize the bottle?

A. By Mr. Tschierschky's and my initials on one side, and Mr. Theodoratus' on the other side.

Mr. Seawell: I will offer this bottle of Schen-

(Testimony of Leonard D. Sanderson.)

ley's Reserve Black Label Whiskey as Government's Exhibit next in order for identification.

(The bottle referred to was marked Government's Exhibit number 4 for identification.)

Mr. Seawell: Q. Did you seize another bottle?

A. Yes, sir.

Q. You have handed me a bottle of Schenley Reserve whiskey [23] with the number 149422. Do you recognize this bottle? A. I do.

Q. Where did you first see it?

A. In the back bar of Tony Legato's establishment at 621 K Street, Sacramento.

Q. How do you recognize that bottle?

A. By Mr. Tschierscky's and my initials on one side and Mr. Theodoratus' on the other side—his name on the other side.

Mr. Seawell: At this time I offer the bottle of Schenley's Reserve Whiskey identified by the witness as Government's exhibit next in order for identification.

(The bottle referred to was marked U. S. Exhibit Number 5 for identification.)

Mr. Seawell: Q. Did you seize another bottle of whiskey at the same time? A. Yes, sir.

Q. Will you hand it to me?

(The witness produces a bottle.)

Q. You have handed me a bottle of Schenley Reserve Whiskey, number 149423. Do you recognize that bottle? A. Yes, sir.

Q. Where did you see it first?

(Testimony of Leonard D. Sanderson.)

A. In the back bar of Tony Legatos' establishment at 621 K Street, Sacramento.

Q. How do you recognize that bottle?

A. By Inspector Tschierschky's and my initials on one side, and Mr. Theodoratus' initials on the other side.

Mr. Seawell: At this time I offer the bottle as [24] Government's Exhibit for identification next in order.

(The bottle referred to was marked U. S. Exhibit Number 6 for identification.)

Mr. Seawell: Q. Did you seize another bottle?

A. Yes, sir. (Producing)

Q. You have handed me a bottle of Schenley Reserve Whiskey, number 149418. Do you recognize this bottle? A. I do.

Q. How do you recognize that bottle?

A. By Inspector Tschierschky's and my initials on one side and Mr. Theodoratus' on the other.

Q. Where did you see this bottle first?

A. At the back bar of Mr. Legatos' establishment, 621 K Street, Sacramento.

Mr. Seawell: At this time I will offer that for identification as Government's exhibit next in order.

(The bottle referred to was marked U. S. Exhibit Number 7 for identification.)

Mr. Seawell: Q. Did you seize another bottle?
(The witness produces a bottle.)

Q. You have handed me another bottle of Schen-

(Testimony of Leonard D. Sanderson.)

ley's Reserve Whiskey, number 149419. Where did you see this bottle?

A. In Tony Legatos' establishment at 621 K Street, Sacramento, California.

Q. How do you recognize the bottle?

A. Mr. Tschierschky's and my initials on one side, and Mr. [25] Theodoratus' initials on the other side.

Mr. Seawell: At this time I will offer the bottle of Schenley's Reserve Whiskey identified by the witness for identification as Government's Exhibit next in order.

(The bottle referred to was marked U. S. Exhibit Number 8 for identification.)

Mr. Seawell: Q. Did you seize another bottle?

(The witness produces a bottle.)

Q. You have handed me another bottle of Schenley Reserve Whiskey, number 149420. Do you recognize that bottle? A. I do.

Q. How do you recognize it?

A. By my initials on one side and Mr. Theodoratus' on the other. This was taken from the back bar of Mr. Tony Legatos' establishment at 621 K Street, Sacramento.

Mr. Seawell: At this time I will offer the bottle of Schenley's Reserve Whiskey identified by the witness as Government's exhibit next in order.

(The bottle referred to was marked U. S. Exhibit number 9 for identification.)

Mr. Seawell: Q. Did you seize another bottle?

(Testimony of Leonard D. Sanderson.)

(The witness produces a bottle.)

Q. You have handed me another bottle of Schenley's Whiskey with the number 149415. I ask you if you recognize that bottle? A. I do. [26]

Q. Where did you see it before?

A. At the back bar of Mr. Tony Legatos' establishment at 621 K Street, Sacramento, California.

Q. How do you recognize that bottle?

A. By Inspector Tschierschky's and my initials on one side and Mr. Theodoratus' on the other side.

Mr. Seawell: At this time I will offer the bottle of Schenley's Reserve Whiskey identified by the witness as Government's exhibit next in order for identification.

(The bottle referred to was marked U. S. Exhibit number 10 for identification.)

Mr. Seawell: Q. Did you seize another bottle?

A. Yes.

Q. Will you hand me that bottle?

(Witness produces a bottle.)

Q. Where did you first see that bottle?

A. In the back bar of Mr. Tony Legatos' bar at 621 K Street.

Q. You have handed me a bottle of Schenley's Reserve Whiskey, number 149416?

A. Yes, sir.

Q. How do you recognize that bottle?

A. Mr. Theodoratus' initials on one side and Mr. Tschierschky's and mine on the other side.

(Testimony of Leonard D. Sanderson.)

Q. When were the initials put on this bottle, by the way?

A. At the conclusion of the Williams test set.

Mr. Seawell: At this time, may it please the Court, I [27] introduce the bottle of Schenley's Reserve Whiskey identified by the witness as Government's Exhibit next in order for identification.

(The bottle referred to was marked U. S. Exhibit number 11 for identification.)

Mr. Seawell: Q. Did you seize another bottle?

(The witness produces a bottle.)

Q. You have handed me a bottle of Schenley's Reserve Whiskey, number 149417? A. Yes.

Q. Where did you seize this bottle?

A. In the back bar of Tony Legatos' establishment at 621 K Street, Sacramento.

Q. How do you identify that bottle of whiskey?

A. Mr. Tschiersky's and my initials on one side, and Mr. Theodoratus' on the other side of the bottle seal.

Mr. Seawell: I will offer this bottle as Government's Exhibit next in order.

(The bottle referred to was marked U. S. Exhibit number 12 for identification.)

Mr. Seawell: Q. I will show you this box and ask you if you recognize that box?

A. I do.

Q. How do you recognize it?

A. By Dr. Love's initials on the top of the seal, with the date.

(Testimony of Leonard D. Sanderson.)

Q. Were those put on in your presence?

A. And sealed in my presence, yes.

Q. Will you look in that case? I will ask you if you seized [28] any of those bottles from Mr. Legatos' premises?

A. Yes, sir.

Q. Will you hand me the ones you seized?

(The witness produces a bottle.)

Q. You have handed me a bottle of Old Hermitage Brand Kentucky straight bourbon whiskey, 93 proof; "This whiskey is four years old," number 149440. I will ask you where you seized that bottle?

A. In the back bar of Mr. Tony Legatos' establishment at 621 K Street, Sacramento.

Q. How do you recognize the bottle?

A. Mr. Tschierschky's and my initials on one side, and Mr. Theodoratus' on the other side.

Mr. Seawell: I will offer this bottle of Old Hermitage brand straight whiskey as Government's exhibit next in order for identification.

(The bottle referred to was marked U. S. Exhibit number 13 for identification.)

Mr. Seawell: Q. Did you seize another bottle?

A. Yes. (Producing)

Q. You have handed me a bottle of Old Forrester bottled in bond whiskey, Kentucky straight bourbon whiskey, 100 proof. I will ask you if you have seen that bottle before?

A. Yes, sir.

Q. Where did you see that bottle?

A. In the back bar of Mr. Tony Legatos' establishment, 621 K Street, Sacramento. [29]

(Testimony of Leonard D. Sanderson.)

Q. How do you identify that bottle?

A. Mr. Tschierschky's and my initials on one side and Mr. Theodoratus' on the other side.

Mr. Seawell: I will now offer that bottle as Government's Exhibit next in order for identification.

(The bottle referred to was marked U. S. Exhibit number 14 for identification.)

Mr. Seawell: Q. Did you seize another bottle?

A. Yes, sir. (Producing)

Q. You have handed me a bottle of Old Hermitage brand Kentucky straight whiskey, number 149441. I will ask you where you seized this bottle?

A. In the back bar of Tony Legatos' establishment, 621 K Street, Sacramento.

Q. How do you identify the bottle?

A. Mr. Tschierschky's and my initials on one side of the bottle seal, and Mr. Theodoratus' on the other.

Mr. Seawell: I will now offer this bottle as Government's exhibit next in order for identification.

(The bottle referred to was marked U. S. Exhibit number 15 for identification.)

Mr. Seawell: Q. Did you seize another bottle?

A. Yes, sir. (Producing)

Q. You have handed me a bottle of Seagram's V.O. Canadian whiskey, a blend of rare selected whiskies, 86.8 proof, number 149442. I will ask you where you seized this bottle? [30]

(Testimony of Leonard D. Sanderson.)

A. At the back bar of Mr. Tony Legatos' bar at 621 K Street, Sacramento.

Q. How do you identify that bottle?

A. By Mr. Theodoratus' initials on one side and a part of the stamp has been taken off and my initials put on the other side.

Q. The stamp was put on, and you recognize that as the stamp that was put on at the time you seized this bottle on the 18th of July, 1945?

A. Yes, sir.

Mr. Seawell: I will offer this bottle as Government's exhibit next in order for identification.

(The bottle referred to was marked U. S. Exhibit number 16 for identification.)

Mr. Seawell: Q. Did you seize any other bottle?
(The witness produces a bottle.)

Q. You have handed me a bottle of Johnnie Walker Black Label blended scotch whiskey, distilled in Scotland, bottled in the United Kingdom under Government supervision, and there is a number on it rubbed off to some extent, however the number "44" has been put on it, and I will ask you if you recognize that bottle? A. Yes, sir.

Q. How do you identify that bottle?

A. By Mr. Tschierschky's initials on one side of the bottle seal and Mr. Theodoratus' on the other side.

Q. Where did you seize this bottle? [31]

A. Mr. Tony Legatos' establishment, 621 K Street, Sacramento.

(Testimony of Leonard D. Sanderson.)

Mr. Seawell: At this time I offer the bottle identified by the witness as Government's Exhibit next in order for identification.

(The bottle referred to was marked U. S. Exhibit number 17 for identification.)

Mr. Seawell: Q. Did you seize another bottle at the same time?

A. Yes, sir. (Producing)

Q. You have handed me a bottle of Seagram's V.O. Canadian whiskey, a blend of rare selected whiskies, 86.8 proof, and I will ask you if you have seen that bottle before?

A. Yes, sir.

Q. Number 149443. Where did you seize it?

A. At Tony Legatos' establishment at 621 K Street, Sacramento.

Q. How do you identify it?

A. By the bottle seal. Mr. Theodoratus' initials on one side of the bottle seal and the other side has been torn off.

Mr. Seawell: At this time I offer the bottle of Seagram's V.O. Canadian whiskey as Government's exhibit next in order for identification.

(The bottle referred to was marked U. S. Exhibit number 18 for identification.)

Mr. Seawell: Q. Did you seize another bottle?

A. Yes, sir. (Produces bottle)

Q. Where did you seize this bottle of Johnny Walker Black [32] Label whiskey, number 149445?

A. At Tony Legatos' establishment at 621 K Street, at the back bar.

(Testimony of Leonard D. Sanderson.)

Q. How do you identify that bottle?

A. By Mr. Tschierschky's initials on one side and the remaining part of the seal has been torn off.

Q. All these bottles from Government's exhibit 1 to —

The Clerk: That will be 19.

Mr. Seawell: At this time I will offer this as Government's Exhibit number 19.

(The bottle referred to was marked U. S. Exhibit number 19 for identification.)

Mr. Seawell: Q. (Continuing) —were all seized on what day?

A. July 18, 1945.

Q. At the time in question when you went in and made your inspection, is that correct?

A. Correct.

Q. Now I will show you this carton and ask you if you recognize that carton? A. I do.

Q. How do you recognize that carton?

A. By Dr. Love's signature and the date. It was sealed in my presence.

Q. I will ask you to identify the bottles in that case.

(The witness produces a bottle.)

Q. You have handed me a bottle of Old Charter, number 149436. This purports to be Kentucky straight bourbon, 90 proof, "This whiskey is six years old." I will ask you where you first saw that bottle?

A. Tony Legatos' establishment [33] at 621 K Street, Sacramento.

(Testimony of Leonard D. Sanderson.)

Q. How do you identify that bottle of whiskey?

A. The strip stamp has been removed in this, but it is right in line—I remember the soiled strip stamp and the label.

Q. Did you put these numbers on there?

A. No, they were put on in the chemist's office in San Francisco.

Q. By the way, you delivered all these bottles after you seized them to the chemist?

A. Personally to the chemist.

Q. What chemist?

A. Mr. R. F. Love, the chemist in charge, 100 McAllister Street, San Francisco.

Mr. Seawell: I will offer that bottle as Government's exhibit next in order for identification.

(The bottle referred to was marked U. S. Exhibit number 20 for identification.)

Mr. Seawell: Did you seize any other bottles?

(The witness produces a bottle.)

Q. You have handed me a bottle of Old Charter Kentucky bourbon whiskey, number 149437. I will ask you where you first saw that bottle?

A. At Tony Legatos' establishment, 621 K Street, Sacramento.

Q. How do you identify that bottle?

A. By Mr. Tschierschky's initials on one side and the main part of the label has been destroyed.

Q. Did you seize this at Tony Legatos' place of business——

A. Yes, sir.

Q. ——at the same time you seized the others?

(Testimony of Leonard D. Sanderson.)

A. Yes.

Mr. Seawell: I will offer this bottle of Old Charter Kentucky straight whiskey as Government's exhibit next in order for identification.

(The bottle referred to was marked U. S. Exhibit number 21 for identification.)

Mr. Seawell: Q. Did you seize any other bottles?

A. Yes, sir. (Producing)

Q. You have handed me a bottle that purports to be bottled in bond Old Forrester whiskey, 100 proof, number 149438. Have you seen that bottle before?

A. Yes, sir.

Q. Whereabouts?

A. At Tony Legatos' establishment, 621 K Street, Sacramento.

Q. How do you identify that bottle?

A. By Mr. Tschierschky's and my initials on one side and Mr. Theodoratus' on the other side of the bottle seal.

Mr. Seawell: I offer this bottle of Old Forrester Kentucky straight bourbon whiskey as Government's exhibit next in order for identification.

(The bottle referred to was marked U. S. Exhibit number 22 for identification.)

Mr. Seawell: Q. Did you seize another bottle?

A. Yes, sir. (Producing) [35]

Q. A bottle of Seagram's Seven Crown Blended Whiskey, 86.8 proof. I will ask you where you saw that bottle. The number is 149433.

(Testimony of Leonard D. Sanderson.)

A. At the back bar of Tony Legatos' establishment at 621 K Street, Sacramento.

Q. How do you identify it?

A. By Mr. Tschierschky's and my initials on one side and Mr. Theodoratus' initials on the other side of the bottle seal.

Mr. Seawell: I will offer this bottle of Seagram's Seven Crown blended whiskey as Government's exhibit next in order for identification.

(The bottle referred to was marked U. S. Exhibit number 23 for identification.)

Mr. Seawell: Q. Did you seize another bottle at that time and place?

(The witness produces a bottle.)

Q. You have handed me a bottle of Lord Calvert blended whiskey, number 149434, being the number on it, it states it is blended whiskey, 86.8 proof. I will ask you if you have seen that bottle before?

A. I have.

Q. Whereabouts?

A. At the back bar of Tony Legatos' establishment at 621 K Street, Sacramento.

Q. How do you identify that bottle?

A. By Mr. Tschierschky's and my initials—and Mr. Theodoratus' initials on one side of the bottle seal. The other part has been torn off. [36]

Q. Did you seize this bottle at the time and place?

Mr. Seawell: I will offer that bottle as Government's exhibit next in order for identification.

(The bottle referred to was marked U. S. Exhibit 24 for identification.)

(Testimony of Leonard D. Sanderson.)

(The witness produces another bottle.)

Mr. Seawell: Q. You have handed me another bottle of Lord Calvert, number 149435, blended whiskey, 86.8 proof. I will ask you if you recognize that bottle?

A. Yes, sir.

Q. Where did you see that bottle first?

A. At Mr. Tony Legatos' establishment, 621 K Street, Sacramento.

Q. And how do you identify that bottle?

A. By Mr. Tschierschky's initials on one side and Mr. Theodoratus' initials on the other side of the bottle seal.

Q. You seized this bottle at the same time and place, is that correct? A. Yes.

Mr. Seawell: I will offer that bottle as Government's exhibit next in order for identification.

(The bottle referred to was marked U. S.

Exhibit number 25 for identification.)

Mr. Seawell: Q. Did you seize another bottle of Seagram's Seven Crown that you have handed me, number 149432?

A. Yes, sir.

Q. Did you seize that bottle? A. Yes.

Q. Where did you seize that bottle?

A. At Mr. Tony [37] Legatos' establishment, 621 K Street, Sacramento, California.

Q. How do you recognize that bottle?

A. By Mr. Tschierschky's initials on one side of the bottle seal and Mr. Theodoratus' on the other side.

(Testimony of Leonard D. Sanderson.)

Mr. Seawell: I offer that bottle of Seagram's 7-Crown Blended Whiskey, 86.8 proof, as Government's exhibit next in order for identification.

(The bottle referred to was marked U. S. Exhibit number 26 for identification.)

Mr. Seawell: Did you seize another bottle?

A. Yes, sir. (Producing)

Q. You have handed me a bottle of Four Roses, purporting to be a blend of straight whiskies, blended by the Frankfort Distilleries, Incorporated, Frankfort, Kentucky, purports to be 90 proof. I ask you where you saw that bottle first?

A. In the back bar of Tony Legatos' establishment at 621 K Street, Sacramento, California.

Q. How do you identify that bottle?

A. By Mr. Tschierschky's and my initials on one side of the bottle seal and Mr. Theodoratus' on the other.

Mr. Seawell: I will offer that bottle as Government's exhibit next in order for identification.

(The bottle referred to was marked U. S. Exhibit number 27 for identification.)

Mr. Seawell: Q. Did you seize another bottle?

A. Yes, sir. (Producing)

Q. You have handed me another bottle of Four Roses, number 149430, purporting to be a blend of straight whiskies. Where did you see that bottle before?

A. In Mr. Tony Legatos' establishment at 621 K Street.

(Testimony of Leonard D. Sanderson.)

Q. How do you recognize that bottle?

A. Mr. Tschierschky's initials on one side of the seal and Mr. Theodoratus' on the other side.

Q. You seized that at the same time and place?

A. Yes.

Mr. Seawell: I offer that as next in order for identification.

(The bottle referred to was marked U. S. Exhibit number 28 for identification.)

Mr. Seawell: Q. Did you seize another bottle?

A. Yes, sir. (Producing)

Q. You have handed me a bottle with the label mutilated, however, it appears "Schenley's Reserve"—

A. Black Label.

Q. Can you tell me what kind of whiskey that is?

A. Schenley Black Label whiskey, 86 proof, blended whiskey.

Q. How do you recognize that bottle?

A. Mr. Tschierschky's initials on one side of the seal and Mr. Theodoratus' on the other side.

Q. Did you seize that at the same time and place? [39]

Mr. Seawell: I will offer that bottle of whiskey as Government's exhibit next in order for identification.

(The bottle referred to was marked U. S. Exhibit number 29 for identification.)

(The witness produces another bottle of whiskey.)

Mr. Seawell: Q. You have handed me another

(Testimony of Leonard D. Sanderson.)

bottle of whiskey that purports to be Schenley's Reserve whiskey, bottled in—bottled by Schenley Distillery, the proof is scraped off——

A. 86 proof.

Q. It is 86 proof—supposed to be 86.8, is that it?

A. No, 86 proof.

Q. And do you recognize that bottle?

A. I do.

Q. Where did you see that?

A. Mr. Tony Legatos' establishment, 621 K Street, Sacramento.

Q. How do you identify that bottle of whiskey?

A. Mr. Tschierschky's and my initials on one side, and Mr. Theodoratus' on the other side of the seal.

Mr. Seawell: I will offer this as Government's exhibit next in order for identification.

(The bottle referred to was marked U. S. Exhibit number 30 for identification.)

(The witness produces another bottle of whiskey.)

Mr. Seawell: Q. You have handed me a bottle of Four Roses, number 149429, which purports to be a blend of straight whiskies, 90 proof. I will ask you if you have [40] seen that before?

A. I have.

Q. Where did you first see it?

A. In the back bar of Mr. Tony Legatos' establishment, 621 K Street, Sacramento.

Q. How do you identify that bottle?

(Testimony of Leonard D. Sanderson.)

A. Mr. Tschierschky's and my initials on one side of the bottle, and Mr. Theodoratus' on the other side.

Mr. Seawell: At this time I will offer this bottle for identification as Government's exhibit next in order.

(The bottle referred to was marked U. S. Exhibit number 31 for identification.)

Mr. Seawell: Is that all?

A. That is all.

Q. That is all that you seized?

Mr. Kennedy: Mr. Seawell, they are all offered for identification?

Mr. Seawell: Yes. I meant to state that, if I didn't.

Q. Now these thirty-one bottles you have testified, I believe, were all seized on the 18th day of July at Tony Legatos' premises?

A. That is right.

Q. Now you had a conversation with the bartender after you had seized these bottles at that time in regard to coming back again?

A. Approximately 10:20 Mr. Theodoratus came to the establishment and went downstairs to the basement in the small office——

Q. And who was he, if you know?

A. He was the manager of the establishment.

Mr. Kennedy: Pardon me. Objected to as calling for a conclusion and opinion of the witness.

Mr. Seawell: Q. Did you have a conversation with him?

(Testimony of Leonard D. Sanderson.)

A. I did.

Q. What did you say to him and what did he say to you?

Mr. Kennedy: Objected to as hearsay.

Mr. Brannely: Objected to as hearsay.

Mr. Seawell: All right, I will withdraw the question.

Q. Anyhow, Mr. Theodoratus came in the place. Then what did you do? Just tell us the next thing you did.

A. I went downstairs to have a talk with Mr. Theodoratus in regards to his knowledge of these bottles having been refilled.

Q. And then what did you do? The next thing that you did after that?

A. Do you want me to say what he told me?

Q. No, no, just say what you did. Did you make any appointment to come back again?

A. Mr. Tschierschky and I made an appointment to have Mr. Maritsas on the premises the next morning, or at any time at his convenience, and he suggested 12:00 o'clock, July 19th, the very next day.

Q. And then did you leave the premises after making that appointment?

A. The bottles were sealed and Mr. Theodoratus signed his name on the seals, and we gave him a copy of the removal of [42] bottled spirits, which is a receipt for the bottles which we had removed, and the bottles were placed into three cartons, and we left the premises.

(Testimony of Leonard D. Sanderson.)

Q. What did you do with the bottles after you left the premises?

A. The bottles were locked up in the back of the car and I kept the key to the back of the car in my pocket at all times.

Q. Then what did you do with them?

A. These bottles were taken to the Bureau chemist in San Francisco, 100 McAllister Street.

Q. And who was that?

A. Mr. R. F. Love.

Q. They were never out of your possession?

A. No, sir.

Q. You didn't take out or add anything to them after you made your test? A. No, sir.

Q. Now did you go back the next day to these premises? A. We did.

Q. Who was present when you arrived there?

A. Mr. Maritsas and Mr. Legatos.

Q. You are referring to the two defendants on trial in this case? A. Yes, sir.

Q. What time was this?

A. This was 12:00 o'clock.

Q. And who was with you?

A. Mr. Tschierschky.

Q. And did you have a conversation with the defendants in regard to the refilling of these bottles?

A. We did. [43]

Q. And what was said by yourself and what was said by Mr. Maritsas in regard to the refilling of any of these bottles? A. I talked——

Mr. Kennedy: Just a moment, if your Honor

(Testimony of Leonard D. Sanderson.)

please. Objected to on the ground it calls for hearsay testimony——

Mr. Seawell: Calls for what?

Mr. Kennedy: ——and there is no proof of the corpus delicti.

Mr. Seawell: May it please the Court——

Mr. Brannely: Your Honor, I make the same objection on behalf of Mr. Legatos, any statement made by any defendants are not admissible in evidence until the corpus delicti has been established. We base our objection on that ground.

The Court: Overruled.

Mr. Seawell: Will you proceed?

Mr. Kennedy: Further, your Honor, there is no proper foundation.

The Court: Overruled.

Mr. Seawell: Go ahead, Mr. Sanderson.

A. Inspector Tschierschky and I presented our credentials to Mr. Legatos and Mr. Maritsas. We had not met them before. And during the course of the conversation I asked him what——

Q. You asked who?

A. Mr. Maritsas what was in this refilling of bottles, if he had any knowledge of the refilling of bottles. He said, [44] “I do.” He said, “I had 14 bottles of Schenley’s Reserve Black Label blended whiskey, 86 proof.” He said, “I put one-half Ron Manana rum and one-half Schenley’s in these bottles.”

Q. In other words, he said he refilled 14 of these

(Testimony of Leonard D. Sanderson.)

bottles that are in evidence that are correct, these Schenley bottles? A. Yes, sir.

Q. With half rum?

A. Yes, sir. I said, "How about the remaining 17 bottles?" He said, "The bartenders at the close of the day's business have small portions of one brand of spirits and they pour them promiscuously from one brand to another. They don't like to have small portions in the bar. The bar is a busy place and they cater to working men, and they don't like to have small portions of liquor in the bottles to start with."

Q. In other words, he said they would take a bottle of Seagram's 5-Crown, or whatever it might be, and pour it into another bottle with, say, Seagram's 7-Crown, or some other brand?

Mr. Kennedy: Objected to as leading and suggestive.

The Court: Overruled.

Mr. Seawell: Well, that is his testimony.

Q. Isn't that correct, that is your testimony?

A. That is my testimony.

Q. Did you have a conversation with Mr. Legatos? [45] A. Yes, sir, I did. He said——

Q. What did he say?

A. He said he absolutely had no knowledge of this, he had instructed his bartenders and his managers absolutely not to refill any spirit liquor or pour it from one bottle to another, and I asked him if Mr. Maritsas was working on a commission basis, and he said, "No," he was working for a salary.

(Testimony of Leonard D. Sanderson.)

Q. Was there any further conversation, anything else said at this time?

A. I asked Mr. Maritsas if he would sign a statement to the effect that he had refilled these bottles, and he said yes. And I wrote out a statement and Mr. Maritsas signed it in the presence of Mr. Tschierschky, Mr. Legatos and myself.

Q. Have you that statement with you?

A. Yes, sir.

Q. Will you produce it?

(The witness produces statement.)

Q. You have handed me a statement here which bears the signature of Chris Maritsas, and do you recognize that signature? A. Yes, sir, I do.

Q. Was that put on in your presence?

A. Yes, sir.

Q. Who signed that? A. Chris Maritsas.

Q. And at the bottom appears, "Subscribed and sworn to before me this 19th day of July," and there are two signatures. Do you recognize the signatures? A. Yes, sir. [46]

Q. Whose signatures are they?

A. The top signature is my signature and the other signature is Inspector Tschierschky's signature.

Q. Was that put on in your presence?

A. Yes.

Q. Did you make any threats to the defendant in order to get him to sign this statement?

A. Absolutely not.

Q. Did you make him any promises——

(Testimony of Leonard D. Sanderson.)

A. No, sir.

Q. Any promises of immunity or otherwise?

A. No.

Q. Didn't beat him or use any force?

A. No.

Mr. Seawell: At this time, may it please the Court——

Mr. Kennedy: Before the statement is read, your Honor——

Mr. Seawell: Wait a minute. I haven't offered the statement yet. May I offer the statement of Chris Maritsas as Government's Exhibit next in order?

Mr. Kennedy: In reference to the statement, your Honor, we object to it on the same grounds heretofore urged relative to the conversation of Chris Maritsas, that the corpus delicti has not been proven.

The Court: Overruled.

(The document referred to was marked U. S. Exhibit number 32.)

Mr. Seawell: At this time I will read the thing to the jury.

This is dated "Sacramento, California, July 19, 1945. [47]

"I, Chris Maritsas, solemnly swears that the foregoing statement is true; I personally refilled 14 bottles of Schenley's Reserve Blended Whiskey with one-half Ron Manana imported rum, 86 proof. I have been doing this refilling for about ten days myself. The remaining bottles have been refilled by

(Testimony of Leonard D. Sanderson.)

the bartenders pouring from one bottle to another. I was fully aware that this was against the laws of the Bureau of Internal Revenue."

Signed "Chris Maritsas."

"Subscribed and sworn to before me this 19th day of July. L. D. Sanderson, Alex G. Tschierschky."

Mr. Seawell: Q. Did you have any further conversation at that particular time that you recall in regard to this matter that would have any bearing on this case?

A. I don't believe so.

Q. And thereafter do you recall that the defendant, Chris Maritsas, was arraigned before the United States Commissioner? A. Yes, sir.

Q. Were you present? A. No, sir.

Q. You weren't present at that time?

A. No, sir.

Q. At either one of the hearings?

A. No, sir.

Mr. Seawell: That is all. [48]

Cross Examination

Mr. Kennedy: Q. Mr. Sanderson, relative to—what is the number on that exhibit?

The Clerk: Thirty-two.

Mr. Kennedy: Q. (Continuing) —32, whose handwriting is this statement in?

A. That is my handwriting.

Q. It is not in Mr. Maritsas' handwriting at all?

A. No, sir.

Q. And you had another and additional conver-

(Testimony of Leonard D. Sanderson.)

sation with him prior to the time he signed that, did you not?

A. I had additional conversation?

Q. Yes, other than you have testified to on your direct examination? A. Not that I recall.

Q. Wasn't there some conversation by you relative to the fine per bottle?

A. No, sir, absolutely not.

Q. I will ask you if it isn't a fact, Mr. Sanderson, at the time and place in question, immediately prior to Mr. Maritsas affixing the signature, you didn't tell him in substance that upon signing the statement the fine would be \$10 per bottle?

A. I absolutely did not.

Q. Did you say anything—did you make any reference at all—— A. No, sir.

Q. ——to any fine? A. No, sir.

Q. Did you make any reference to any bottles?

A. I had reference to the 31 refilled bottles. No reference [49] to any fine.

Q. Did you ever have a conversation with anyone else? Did you ever have a conversation with Nick Theodoratus?

A. No, sir. I had a conversation with him, yes, sir.

Q. Relative to the amount of fine?

A. No, sir.

Cross Examination

By Mr. Brannely:

Q. Mr. Sanderson, you state that the conversation took place between Mr. Legatos, Mr. Maritsas,

(Testimony of Leonard D. Sanderson.)

yourself and the other officer on the 17th day of July, about noon, is that correct?

Mr. Seawell: Nineteenth.

A. No, sir, the 19th day of July, about noon.

Q. Mr. Brannely: That was the day after you had taken these 31 bottles from the establishment known as the Golden Tavern, is that correct?

A. That is correct.

Q. And I imagine that when you took these 31 bottles from the tavern there and while you were making your various tests in the tavern, that you looked at the revenue stamps very carefully, didn't you?

A. That is right.

Q. And you found that each of the revenue stamps on these 31 bottles had been broken?

A. Naturally, yes.

Q. You did find that to be a fact, did you not?

A. That is right.

Q. And I believe you said something regarding this conversation which took place on the next day at about noon, during [50] which time Mr. Legatos was present?

A. That is right.

Q. And Mr. Maritsas said to you that he had added rum to 14 bottles of Schenley's?

A. That is right.

Q. Is that correct? A. That is correct, sir.

Q. And that he explained to you the manner in which the remainder of the bottles had contents other than their original contents—that is, rum or whatever it might be——

A. Yes.

Q. ——that the other bartenders—the short bot-

(Testimony of Leonard D. Sanderson.)

tles that were almost empty, they would pour into bottles that contained more liquid when the went off duty?

A. That is right, that is what Mr. Maritsas stated.

Q. And Mr. Legatos—of course, you were very much interested in knowing where Mr. Legatos stood in this deal, weren't you, Mr. Sanderson?

A. He was the proprietor of the establishment.

Q. Yes, and you were very much interested in learning what he had to do with this deal?

A. Yes. He was the proprietor of the establishment.

Q. And did I understand you to say that Mr. Legatos said he knew nothing about anything like that going on in his establishment?

A. He told me that he absolutely told his bartenders that he absolutely did not want any tampering with liquor bottles.

Q. No tampering with liquor bottles?

A. Yes, sir. [51]

Q. He stated that to you? A. Yes.

Q. Did he further state to you that the bartenders and everyone in his establishment had instructions not to violate any provisions of the law in respect to the sale of beverages?

A. That is right.

Q. I believe you stated Mr. Legatos was the owner of a number of bars and restaurants and so forth? A. That is right.

Q. And that same day did you go to another one

(Testimony of Leonard D. Sanderson.)

of his establishments known as the New Tony's Cafe, 422 L Street——

Mr. Seawell: Just a moment. I will object as incompetent, irrelevant and immaterial to what happened in any other bar.

Mr. Brannely: May I be heard, your Honor?

The Court: Yes.

Mr. Brannely: The gist of this offense against Mr. Legatos, your Honor, is knowledge and intent on his part to violate the law. Now my question is a preliminary question to bring out this fact: That this very same day other establishments belonging to Mr. Tony Legatos were visited by these agents, and identical tests were made in other establishments owned by him, and there was nothing found in those places which contained any deleterious substance or the addition of any other liquid than the original contents. And I say this, and our position is this, that that is a very important fact for the jury to consider in determining whether there was any intent, and I asked that question, your Honor, to go to the [52] intent of Mr. Legatos, and it is for that purpose and that purpose alone.

Mr. Seawell: May it please the Court, I have no knowledge of whether or not they went to any of these bars, but if they did, there is a telephone service in Sacramento and it would be absurd to expect them to find anything in the other bars. I don't see how that would have any bearing on the guilt or innocence of the defendant what happened in other bars. We are talking about this one bar.

(Testimony of Leonard D. Sanderson.)

The Court: Overruled.

Mr. Brannely: You may answer.

The Witness: What was the question?

Q. Did you go to another premise in Sacramento owned by Mr. Legatos known as the New Tony's Cafe? A. We did.

Q. Did you make your tests there?

A. Yes.

Q. Did you find anything wrong there?

A. Well, it was late that afternoon when we went there, and there was plenty of time between—

Q. Just a moment. Answer the question.

A. No, we found nothing wrong there.

Mr. Seawell: Now, let him explain.

The Court: Yes.

Mr. Brannely: Q. Your answer is you found nothing wrong there.

Mr. Seawell: Now you may explain your answer if you [53] desire.

Mr. Brannely: No, your Honor, that is not a yes or no answer. The answer explains itself. Anything that this witness would testify to in addition to what he has already stated would be not responsive to the question, and further it would be merely his opinion and conclusion, and I object to any further voluntary statement on the part of this witness.

Q. Now, Mr. Sanderson, who was this Nick Theodoratus you have been mentioning in the testimony here frequently?

A. He is Mr. Legatos' manager.

Q. Of the Golden Tavern?

(Testimony of Leonard D. Sanderson.)

A. Right, so he stated.

Q. At 621 K Street in the City of Sacramento?

A. That is correct.

Q. Have you subpoenaed him or produced him as a witness in this case?

Mr. Seawell: Just a minute. I object to that as incompetent, irrelevant and immaterial as to who we subpoenaed as a witness. He works for Mr. Legatos. I should think you could find him.

Q. Mr. Brannely: Let me ask you this: Do you know where Mr. Theodoratus is at the present time?

Mr. Seawell: I object to that as incompetent, irrelevant and immaterial so far as this case is concerned.

The Court: Sustained. [54]

Mr. Brannely: I think that is all.

Redirect Examination

Mr. Seawell: Q. Now you stated you went to the place owned by Tony Legatos at 621 K Street at 10:00 in the morning, about 10:00 a.m. on the 18th day of July, 1945, is that correct? A. Yes.

Q. And did you do other work in Sacramento after that? A. Yes, sir.

Q. And you said you went to another place owned by Tony Legatos at what time?

A. It was late, very late in the afternoon. I imagine 4:00 or 4:30 in the afternoon.

Q. And between that time and the time you went to Tony's did you work at other places?

(Testimony of Leonard D. Sanderson.)

A. Yes, sir.

Q. How many?

A. There was Mr. Legatos' place and four others, and then Mr. Legatos' place on L Street, four hundred twenty something L Street. Six places.

Q. And you had been to a lot of bars in between? A. Six that one afternoon.

Mr. Seawell: That is all:

Recross Examination

Mr. Brannely: Q. Mr. Sanderson, I believe you stated in your testimony there that at the time on July 18th that you made the seizure of these 41 bottles, Mr. Legatos was not present?

A. He was not.

Q. Did you make inquiries at that time regarding the [55] whereabouts of where Mr. Legatos was at that time?

A. When Mr. Theodoratus came in we asked Mr. Theodoratus if we could contact Mr. Legatos, and he said, "I don't believe you can, I have no idea where he is."

Q. In other words, you made no inquiry to ascertain whether Mr. Legatos was in Sacramento or out of Sacramento, is that correct?

A. We didn't know.

Q. You didn't know. So far as you know, Mr. Legatos had no knowledge of the seizure here until the next day when you saw him at noon?

A. I believe he knew about it very shortly——

(Testimony of Leonard D. Sanderson.)

Q. Just a moment, I am not asking you what you believe, I am asking you what you know.

A. I don't know.

Q. You don't know.

Mr. Brannely: That is all.

Mr. Seawell: That is all. Thank you.

ALEX TSCHIERSCHKY,

called for the Government, sworn.

Direct Examination

Mr. Seawell: Q. What was your occupation on or about the 17th, 18th and 19th days of July, 1945?

A. I was an Inspector in the Alcohol Tax Unit of the Internal Revenue Department.

Q. Since then you have resigned, is that correct?

A. Yes, sir.

Q. When was that about?

A. I believe in August, August 15th.

Q. Of 1945? A. Yes.

Q. Now on or about the 18th day of July, 1945, did you accompany Mr. Sanderson, the other agent who has testified, to Sacramento? A. I did.

Q. And when you came to Sacramento did you accompany him to various bars around and about Sacramento and make certain tests?

A. That is right.

Q. And among other bars did you go to one located at 621 K Street, known as the Golden Tavern?

(Testimony of Alex Tschierschky.)

A. We did.

Q. And what time did you go to that bar?

A. Well, I think that was around noon, around 12:00 o'clock.

Q. You went there——

A. No, it was early in the morning, right after they opened up. About—oh, I would say 10:20, 10:30.

Q. You went twice to this bar, once on the 18th and once on the 19th, is that correct?

A. That is right.

Q. And the first day you went to the bar who accompanied you there? A. Mr. Sanderson.

Q. And was the bar open when you got there?

A. Yes.

Q. Was anybody in it, customers?

A. There was a few customers at the bar. [57]

Q. Was a bartender present?

A. Yes, sir.

Q. And what happened after you went into the bar?

A. Well, when we presented our credentials and identified ourselves to a man by the name of O'Leary and told him what the purpose of our being there—what the purpose of our visit was, we went behind the counter, or the bar, and took out some bottles for the purpose of testing.

Q. How many bottles did you take out?

A. Approximately 40.

Q. You say you tested them. What do you refer to as testing bottles?

(Testimony of Alex Tschierschky.)

A. Well, by using the Williams Test.

Q. And what does that test determine? Why did you test the bottles?

A. That tests the——

Mr. Kennedy: Objected to as calling for a conclusion of the witness.

Mr. Seawell: Q. Did you go to this school to study the Williams Test? A. I did.

Q. How long did you go to school?

A. About six weeks.

Q. And who conducted the school?

A. Well, a man by the name of—I can't think of his name.

Q. Anyway, it was conducted under the supervision of the United States Government, is that correct? A. Yes.

Q. And you learned how to conduct these tests at that school?

Mr. Kennedy: Objected to as leading and suggestive.

Mr. Seawell: I am qualifying him—— [58]

Mr. Kennedy: You can do it without leading questions.

Mr. Seawell: All right.

Q. What did you do at the school?

A. Well, they taught us the purpose of the test, the reason for the separation of alcohol from other substances and what it determined.

Q. Well, any how, you did take out these 40 bottles from behind the bar, is that correct?

A. That is right.

(Testimony of Alex Tschierschky.)

Q. And then what did you do with them?

A. We tested them and those that we found that were irregular, we set them aside and then sealed them later and confiscated them.

Q. Will you come down and take a look at these bottles—you have to look at each and every one—your signature appears, I believe, on all of them—will you identify each bottle? We start here with number 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17—18; will you take a look at those 18 bottles and see if your signature appears on each and every one?

A. Yes. The strip seal here is not completed.

Q. Speak loud so the jury can hear you.

A. The strip seal here is not completed.

Q. Well, on all the bottle from 1 to 17, which are now upon the desk, your signature appears upon them? A. Yes. [59]

Q. And when did you put your signature on the bottles? A. It was on July 18th.

Q. Now will you take a look—may I have him hake a look at the remaining bottles? That is the easiest way to do it. Does your signature appear upon those?

A. All but this one here (indicating).

Q. All but this one here. Now you state that your signature appears upon each and every bottle with the exception of two that we have removed, is that correct? A. Yes.

Q. Now I will show you Government's exhibit 18

(Testimony of Alex Tschierschky.)

for identification and ask you if you recognize that bottle? A. Yes, I believe I do.

Q. And how do you identify that bottle?

A. Well, by this top on it. I know there were several like that.

Q. Will you speak loud enough for the jury to hear you?

A. By this top, this type of top that has been adjusted to hold the label on—strip stamp on.

Q. The strip stamp was put on the bottles at that time? A. Yes.

Q. I will hand you this bottle of Old Charter and ask you if you can recognize that, Exhibit 20.

A. No, I can't.

Q. You can't recognize that. You weren't present when the number was put on? A. No.

Q. At any event, all the bottles, with the exception of Government's Exhibit 20, you recognize, is that correct? A. Yes.

Q. And where did you see all these bottles, Government's Exhibit 1 to 31? With the exception of Exhibit 20.

A. At the premises of 618 K Street, known as the Golden Tavern.

Q. When? A. That was on July 18th.

Q. 1945? A. 1945.

Q. And do you know what was done with those bottles after they were inspected by you and the other inspector?

A. Yes. We put them in a carton after sealing them and put them in our car and locked the car.

(Testimony of Alex Tschierschky.)

Q. And then they were in the custody of either you or the other inspector, which?

A. Yes, Mr. Sanderson.

Q. Mr. Sanderson had custody from then on. Now were you present when a conversation took place between the bartender O'Leary—I will withdraw that question. At any event, after you had sealed these bottles, you removed them to the car, is that correct? A. Yes.

Q. And did you make an appointment to return the next day with anyone?

A. Yes, we were to meet around 12:00 o'clock, and I think Mr. Maritsas was to be there.

Q. And then did you leave the premises that day? A. On July 19th? [61]

Q. July 18th now. A. July 18th? Yes.

Q. And then did you come back the next day?

A. That is right.

Q. And what time did you come back?

A. I think it was after 12:00 o'clock.

Q. 12:00 noon, is that correct?

A. Yes, sir.

Q. And who was present when you returned?

A. Mr. Maritsas and Mr. Legatos.

Q. And were you present?

A. And Mr. Sanderson and myself.

Q. And Mr. Sanderson. Then there was a conversation had between you, Mr. Sanderson, Mr. Maritsas and Mr. Legatos in regard to the refilling of some bottles which you had seized the day previous, July 18, 1945? A. Yes, sir.

(Testimony of Alex Tschierschky.)

Q. Do you recall what was said by Mr. Maritsas and Mr. Legatos in that regard?

A. Well, we asked him if he knew——

Q. Asked who?

A. Mr. Maritsas if he knew how this happened, and he told us that he had filled 14 bottles himself and that the rest of the bottles——

Q. Did he state what he had filled them with?

A. He said the Schenley 86 proof with equal parts of Ron Manana rum and Schenley whiskey.

Q. Did he tell you how the remaining bottles became filled? [62]

A. Yes, sir. He said that his bartenders filled them from partially filled bottles and they were emptied into different bottles and mixed.

Q. In other words, they took different brands of whiskey and mixed them to fill one bottle, is that correct?

A. That is right.

Q. Did you hear what Mr. Legatos had to say in regard to his part in the transaction?

A. Yes. Mr. Legatos stated that he told his boys not to—he told that to Mr. Maritsas, I believe, at the time—it was directed to him, that they weren't to fill any bottles.

Q. In other words, he denied having any part in the whole transaction?

A. That is right.

Mr. Seawall: That is all.

Cross Examination

Mr. Kennedy: Q. Mr. Tschierschky, your conversation with Mr. Maritsas and Mr. Legatos was

(Testimony of Alex Tschierschky.)

the same conversation which Mr. Sanderson, your associate, testified? A. That is right.

Q. In other words, all four of you were present?

A. That is right.

Q. It was sometime around noon on July 17th?

A. Yes.

Q. Sometime around there? A. Yes.

Q. Now going to the conversation of Mr. Maritsas relative to the 14 bottles, he stated, you said, that he had filled all [63] of those?

A. Yes, himself.

Q. Put rum in there. Now can you remember his exact words, please, with reference to the other bottles?

A. That is pretty hard for me to remember now. I have not been in the service for nine months and I haven't paid much attention to it.

Q. Was his statement that he had nothing to do with these bottles, that the other bartenders might have? A. Well, I am not positive.

Q. Would you say that that was not true? In other words, his actual statement was that he knew nothing about that at all, that the other bartenders might have put some kind of spirits from one bottle into another?

A. I believe he said it was done.

Q. Well, this is true, as a matter of fact: Practically every place at the end of the day they will sometimes take the residue in one bottle where there are three or four of the same brand and put it in another, isn't that true?

(Testimony of Alex Tschierschky.)

Mr. Seawall: Just a moment. That is assuming everybody is a law violator. It is against the law to pour one bottle into another, and I don't believe every place does it every day.

Mr. Kennedy: I don't believe it is against the law——

The Court: Proceed.

Mr. Kennedy: Q. Then your best recollection of the conversation at the present time is that you might have said [64] that, that it was the other bartenders? A. Yes.

Q. But he did deny specifically having any knowledge at all of anything other than the bottles labeled Schenley's, isn't that true?

A. The fourteen bottles, yes.

Q. And he denied having anything to do with the remainder of the bottles? A. Yes.

Mr. Kennedy: That is all.

Mr. Seawall: Just one more question.

Mr. Brannely: Just a moment. I haven't cross examined him yet. That is the orderly procedure, isn't it?

Cross Examination

By Mr. Brannely:

Mr. Brannely: Q. Mr. Tschierschky, is that the way you pronounce your name? A. Yes.

Q. You and Mr. Sanderson, when you went down there, I imagine were pretty much interested in the stamps on the bottles? A. Yes.

Q. As you were both members of the Alcoholic Tax Unit? A. Yes.

(Testimony of Alex Tschierschky.)

Q. And it was your duty to see whether the stamps were broken or remained intact on the bottles?

Mr. Seawall: I will stipulate the stamps were on them.

Mr. Brannely: Q. You found that each stamp on the thirty-one bottles here individually had been broken, did you not? A. Yes.

Q. Now you were present at the time a statement was written [65] out by Mr. Sanderson and signed by Mr. Maritsas. In that statement you remember that he admitted that he had placed Ron Manana imported rum, I think, in with the contents of 14 Schenley's blended whiskey bottles?

A. Yes.

Q. That was the contents of it? A. Yes.

Q. And, of course, before Mr. Sanderson wrote that he had a discussion with Mr. Maritsas, didn't he? A. Yes.

Q. And the discussion, I imagine, was along the lines of what he wrote down, is that correct?

Mr. Seawall: Of course, this is outside the direct examination.

Mr. Brannely: What do you mean it is outside the direct examination?

Mr. Seawell: I was trying to identify these so you could go into that, but you objected to it.

Mr. Brannely: He has testified he was present when it was signed, and it is already in evidence——

Mr. Seawell: It is outside the direct examination, but you may proceed.

(Testimony of Alex Tschierschky.)

Mr. Brannely: Mr. Tschierschky, was Mr. Legatos present at the time that statement was signed?

A. I believe he was.

Q. Well, now, do you know if he was not? That is what we are interested in.

A. Well, I would say yes. [66]

Q. You would say yes? A. Yes.

Q. And was Mr. Theodoratus, this gentleman whose name has been so prominently mentioned, was he present?

A. I don't think so, I don't remember.

Q. Was he on the premises, if you know?

A. He was there the day before. He may have come in and may not have. I am not positive.

Q. Did you find out what his duties were at the Golden Tavern?

Mr. Seawell: Who is this?

Mr. Brannely: Nick Theodoratus.

A. I understood he was manager there.

Q. You understood he was the manager there. Now you also were present at the time this conversation was had in which Mr. Legatos stated that he had absolutely no knowledge that anything like that was being done? You were there, weren't you? And I imagine your testimony concurs with that of Mr. Sanderson in that he explicitly instructed his bartenders to follow every provision of the Alcohol Tax Unit regulations.

Mr. Seawell: That wasn't the testimony.

Mr. Brannely: If you have an objection——

(Testimony of Alex Tschierschky.)

Mr. Seawell: Yes, I have an objection to the form of the question.

The Court: Proceed.

Mr. Brannely: Q. Mr. Tschierschky, were you present with Mr. Sanderson when the inspection of the premises at 422 [67] L, New Tony's Cafe, was made? A. Yes.

Q. You were there too. And I imagine your testimony agrees with Mr. Sanderson's that you found nothing wrong with the bottles on the premises there? A. That is right.

Mr. Brannely: That is correct. That is all.

Redirect Examination

Mr. Seawell: Q. And you went there also, I guess, at 4:30 or 5:00 o'clock, as Mr. Sanderson stated? A. That is right.

Q. And you had gone to a number of other bars in Sacramento during the day?

A. That is correct.

Q. I will show you this statement of Chris Maritsas and ask you if this is the statement you referred to on cross examination by Mr. Brannely?

A. Yes, it is.

Q. And do you recognize the signature at the bottom?

A. Yes. He signed it after Mr. Sanderson—he signed that after Mr. Sanderson read the statement.

Q. Did you also sign it? A. Yes.

Q. Is that your signature (indicating)?

A. Yes.

(Testimony of Alex Tschierschky.)

Q. Was there any force or duress used by either you or Mr. Sanderson? A. No.

Q. Did he give the statement freely and voluntarily? A. That is right.

Q. And the statement was to the effect that he had refilled 14 bottles of Schenley's with rum and the remaining bottles had been refilled by the bartenders pouring from one bottle [68] to the other? "I was fully aware this was against the laws of the United States and the Bureau of Internal Revenue"? Is that his statement?

A. That was his statement.

Mr. Seawell: That is all.

Mr. Kennedy: Or Mr. Sanderson's?

Mr. Seawell: Q. No, it was the statement of Mr. Maritsas, is that correct? A. Yes.

Recross Examination

Mr. Kennedy: Q. It was written by Mr. Sanderson, is that correct? A. Yes.

Redirect Examination

Mr. Seawell: Q. Well, that is the one he made in your presence and swore to that that was the truth, did he not? A. Yes.

Mr. Seawell: That is all. Dr. Love.

R. F. LOVE,

called for the Government, sworn.

Direct Examination

Mr. Seawell: Q. Dr. Love, what is your occupation?

A. Chemist, Internal Revenue Bureau.

Q. How long have you been so employed?

A. Twenty-seven years.

Q. And from what schools did you graduate?

A. Graduated from Colorado College, Bachelor of Arts, Chemistry. [69]

Q. As a Chemist? A. Yes, sir.

Q. And when was that? A. 1911.

Q. And since that time what occupation have you followed?

A. Teacher of Chemistry for five years.

Q. Whereabouts?

A. Leadville, Colorado, and Colorado College. Since then I have worked.

Q. Since then you have been employed by the United States Government, is that correct?

A. Yes.

Q. As a chemist? A. Yes.

Q. What have your duties mainly consisted of so far as an examination of whiskies and other liquors during the past twenty-seven years? Have you conducted a number of tests as to whether certain liquids are whiskies or wine or whatnot?

A. Yes.

Q. And over those twenty-seven years could you

(Testimony of R. F. Love.)

estimate roughly how many tests you have made in regard to various liquors?

A. Hundreds of thousands, I guess.

Q. You would say hundreds of thousands. And you were present all during the prohibition era, so I guess you had considerable experience then?

A. Yes, sir.

Mr. Seawell: I believe the doctor is qualified. Have you any questions on his qualifications?

Mr. Kennedy: If we have, we will ask them.

Mr. Seawell: Q. Were certain bottles of whisky brought to you sometime in the latter part of July, 1945, by Mr. [70] Sanderson, the agent here in charge, which he stated he seized in Sacramento?

A. Yes, sir.

Q. When were those brought to you?

A. The first day of August, 1945.

Q. And what did you do with those bottles after you got them?

A. Analyzed the contents of them.

Q. You analyzed the contents of these bottles?

A. Yes, sir.

Q. And how did you analyze the contents of the bottles?

A. In most of them I determined the proof or the alcoholic content, the acidity, the color and the solid matter, and in some of them whether or not they contained caramel.

Q. Now at the time you received the bottles, for the purpose of identification did you put any numbers on them?

A. Yes, sir.

(Testimony of R. F. Love.)

Q. I will just show you one number, which happens to be Government's Exhibit 6 for identification, and ask you if that is the type of number that you put on each and every bottle that you examined? A. Yes, sir.

Q. You took samples from each and every bottle, doctor? A. Yes, sir.

Q. Now I will show you 149415—I will show you a bottle which is labeled Schenley's reserve, and is numbered 149415, and ask you from whom you received that bottle? [71]

A. Received it from Mr. Sanderson on August the first, 1945.

Q. And did you test it for proof?

A. I did.

Q. And what did you find the proof to be? Have you your notes? A. 85.5 proof.

Q. And the label states it should be 86 proof, is that correct? A. Yes.

Q. What else did you find in regard to that bottle?

A. I found that it had 32.4 parts of acid—I beg your pardon, 21.6 parts of acid.

Q. And what should have been in that bottle?

A. 32.4 parts.

Mr. Kennedy: Pardon me. I object to that question on the ground that it calls for an opinion and conclusion of the witness. I am not attacking the witness' qualifications as a chemist, but I believe the witness, if you develop his testimony as to the specific contents of any particular bottle insofar as

(Testimony of R. F. Love.)

proof is concerned, solids and acids, that the witness will testify that there is a variation in bottles that come from the distillery, and that what should be in the bottle is not a question—it is based upon the type of mash and everything else.

Mr. Seawell: Q. Did you use what is known as a control bottle in making these tests?

A. Yes, sir.

Q. And what is a control bottle?

A. It is an unopened bottle of the same brand as the one in question. [72]

Q. And did you have such a bottle at the time you made these tests? A. Yes, sir.

Q. And did you test against that bottle in each instance? A. I did.

Q. In other words, when you made a test of Schenley's, you had a bottle of Schenley's which had been unopened and you broke the seal and made a test of the contents of that bottle for a control?

A. Yes, sir.

Q. And if you tested for Seagram's V. O. Canadian Whiskey the same thing was done, and that was done in each instance; if you had a bottle of Old Forester Whiskey that was tested in the same way, is that correct?

Mr. Brannely: Just a moment. That is putting the answer in the mouth of the witness. It is leading and suggestive. We object to the question on that ground.

Mr. Seawell: Then what did you do in regard to the control bottles?

(Testimony of R. F. Love.)

A. I obtained as many control bottles as possible of every brand which is brought into the laboratory for analysis so that there will be something with which to compare the open or suspected bottles, and I receive a great many of unopened bottles of all brands.

Q. And you have a control bottle for each and every brand involved in this case, is that correct?

A. Yes, sir.

Q. Now you stated that the control bottle was 32.4 and your sample was 21.6, is that correct? These were acids. [73]

A. Yes, sir.

Q. As to color, what did the test show?

A. The color of the whiskey in this bottle is 7.5 and in the control bottle it was 9.5.

Q. What does that mean, 7.5 and 9.5?

A. Those figures are units on an arbitrary scale for an instrument which is used to read the color of a liquid, the depth of color. 7.5 was a lighter color than 9.5.

Q. In other words, this bottle was 2 per cent lighter than the control bottle, is that correct?

A. Well, it isn't correct exactly. It is units.

Q. Two points? A. Two units.

Q. Did you test as to solids? A. Yes.

Q. What did you find in respect to solids?

A. I found in this bottle 105.4 per cent solids and the control bottle 148.2 per cent.

Q. What does that indicate?

A. Based upon—

(Testimony of R. F. Love.)

Mr. Kennedy: Object to that as ceiling for a conclusion of the witness.

Mr. Seawell: This man is qualified as an expert. I want him to explain to the jury what he means when he says 148.2 per cent and 105.4 per cent solids. It wouldn't mean anything to the jury unless he explained it.

The Court: Go ahead.

Mr. Seawell: What does that indicate? [74]

A. These figures are based on the percentage of solid matter in the liquid. 105 parts really means 105 one-thousandths of a per cent and 148 parts means 148 one-thousandths of a per cent. The figures are small, but the difference is relatively large between the two figures, indicating that the liquor in this bottle is not the same as the liquor in the control bottle, or the same brand.

Q. Now, can you state what has been added to that bottle? A. Yes, sir.

Q. What? A. Rum.

Q. Can you state what percentage of rum?

A. No, I couldn't tell that.

Q. You can't tell the percentage, but you can tell from your test that rum has been added to the bottle, is that correct? A. Yes.

Mr. Seawell: At this time I will offer Government's Exhibit 10 for identification as Government's Exhibit 10 in evidence.

Mr. Kennedy: Same objection on the grounds heretofore urged.

Mr. Seawell: Is it admitted in evidence?

(Testimony of R. F. Love.)

The Court: Admitted.

(The bottle referred to was marked U. S. Exhibit 10 in evidence.)

Mr. Seawell: Q. I will show you Government's Exhibit 11 [75] for identification and ask you if you made an analysis of the contents of that bottle? A. I did.

Q. And that is number 149416, is that correct?

A. Yes, sir.

Q. And what did you find in regard to that bottle?

A. I found the analysis of this bottle to be practically identical with the preceding one, and, therefore, as much different from the control bottle at the preceding one, and also that this bottle contains rum.

Q. You found that contains rum.

Mr. Seawell: I will offer Government's Exhibit 11 for identification as Government's exhibit 11 in evidence.

The Court: Admitted.

(The bottle referred to was marked U. S. Exhibit 11 in evidence.)

Mr. Kennedy: Your Honor, so I won't be reiterating my objection goes to all this?

The Court: Yes.

Mr. Seawell: Q. I will show you Government's Exhibit 12 for identification, and ask you if you examined the contents of that bottle, that being number 149417? A. I did.

(Testimony of R. F. Love.)

Q. And what did you find that bottle to contain?

A. The results of the analysis were practically identical with the preceding ones, and the bottle contains rum. [76]

Mr. Seawell: I will offer exhibit 12 for identification as Government's Exhibit next in order, in evidence.

The Court: Admitted.

(The bottle referred to was marked U. S. Exhibit 12 in evidence.)

Mr. Seawell: I will show you Government's Exhibit 7 for identification, numbered 149418, and ask you if you examined the contents of that bottle?

A. I did.

Q. What did you find that bottle to contain?

A. Found the contents to be similar to the preceding ones, and it also contains rum.

Mr. Brannely: What is that exhibit, Mr. Seawell?

Mr. Seawell: Number 7 for identification. I will offer this as Government's exhibit 7 in evidence.

(The bottle referred to was marked U. S. Exhibit number 7 in evidence.)

Mr. Seawell: Q. I will show you Government's Exhibit 8 for identification, numbered 149419, and ask you if you examined the contents of that bottle?

A. I did.

Q. And what did you find after examining that bottle?

(Testimony of R. F. Love.)

A. The analysis was the same as the preceding, and the bottle contains rum.

Mr. Seawell: I will offer Government's Exhibit 8 for identification as Government's Exhibit 8 in evidence.

The Court: Admitted. [77]

(The bottle referred to was marked U. S. Exhibit 8 in evidence.)

Mr. Seawell: Q. I will now show you Government's Exhibit 9 for identification, numbered 149-420, and ask you if you examined the contents of that bottle?

A. I did.

Q. Will you tell the Court what that contains, and the jury?

A. The results of the analysis were the same as the preceding bottles, and rum was present.

Mr. Seawell: I will offer Government's Exhibit 9 for identification as Exhibit number 9 in evidence.

(The bottle referred to was marked U. S. Exhibit 9 in evidence.)

Mr. Seawell: Q. I will show you Government's Exhibit 4 for identification, number 149421, and ask you if you examined the contents of that bottle?

A. I did.

Q. What did you find that to contain?

A. The results were the same as for the preceding bottles, and rum was present.

Mr. Seawell: I will offer Government's Exhibit

(Testimony of R. F. Love.)

4 for identification as Government's Exhibit 4 in evidence.

(The bottle referred to was marked U. S. Exhibit 4 in evidence.)

Mr. Seawell: Q. I will show you this bottle, number 149422, Government's Exhibit 5 for identification, and ask [78] you if you examined the contents of that bottle?

A. I did.

Q. What did you find that bottle to contain?

A. The contents were the same as the preceding, including the presence of rum.

Mr. Seawell: I will offer Government's Exhibit 5 for identification as Government's Exhibit next in order.

The Court: Admitted.

(The bottle referred to was marked U. S. Exhibit 5 in evidence.)

Mr. Seawell: Q. I will show you Government's Exhibit number 6 for identification, number 149-423, and ask you if you examined the contents of that bottle?

A. I did.

Q. What did you find that bottle to contain?

A. The same analysis as the preceding, including the presence of rum.

Mr. Seawell: I will offer Government's Exhibit 6 for identification as Government's Exhibit 6 in evidence.

(The bottle referred to was marked U. S. Exhibit 6 in evidence.)

The Court: Ladies and gentlemen of the jury, we will now recess until 2:00 o'clock this afternoon. Remember the admonition heretofore given you.

(Thereupon an adjournment was taken until 2:00 o'clock p.m. this date.) [79]

Wednesday, April 10, 1946—2:00 o'clock p.m.

Afternoon Session

R. F. LOVE ON THE WITNESS STAND

The Court: The Clerk will call the roll of jurors.
(Roll called.)

The Clerk: They are all present, sir.

The Court: You may proceed, gentlemen.

Direct Examination (Continued)

Mr. Seawell: Q. Dr. Love, I will show you Government's Exhibit 2 for identification, number 149424, and ask you if you have seen that bottle before? A. I have.

Q. Did you make an examination of the contents of that bottle?

A. I did.

Q. What did you find it to be?

A. The contents to be the same as the previous bottles.

Q. Referred to this morning in your testimony before adjournment?

A. Yes, sir, and it contains rum.

Mr. Seawell: I will offer this bottle, Govern-

(Testimony of R. F. Love.)

ment's Exhibit 2 for identification, as Government's Exhibit 2 in evidence.

The Court: Admitted.

(The bottle referred to was marked U. S. Exhibit 2 in evidence.) [80]

Mr. Seawell: Q. I will show you bottle number 149425, which is Government's Exhibit 1 for identification, and ask you if you have seen that bottle prior to today?

A. I have.

Q. Where did you see this?

A. I received it with the others.

Q. Did you make an examination of the contents? A. I did.

Q. What did you find it to contain?

A. The contents were the same as the other bottles, contained rum.

Mr. Seawell: I will offer Government's Exhibit 1 for identification as Government's Exhibit 1 in evidence.

(The bottle referred to was marked U. S. Exhibit 1 in evidence.)

Mr. Seawell: I will show you Government's Exhibit 3 for identification, the number of the bottle is 149426, and ask you if you have seen that bottle before?

A. I have.

Q. Did you receive that at the same time you received the others? A. I did.

(Testimony of R. F. Love.)

Q. Did you make an examination of the contents? A. I did.

Q. What did you find it to be?

A. The contents are the same as the other bottles, and it contains rum.

Mr. Seawell: I will offer Government's Exhibit 3 for [81] identification as Government's Exhibit 3 in evidence.

The Court: Admitted.

(The bottle referred to was marked U. S. Exhibit 3 in evidence.)

Mr. Seawell: Q. I will show you Government's Exhibit 29, number 149427, and ask you if you have seen that bottle before? A. I have.

Q. Did you examine the contents of that bottle? A. I did.

Q. From whom did you receive it?

A. I received it from Mr. Sanderson with the other bottles.

Q. What did you find the contents to be?

A. The contents were the same as the previous bottles, and it contains rum.

Mr. Seawell: I offer the last bottle, number 149427, as Government's exhibit next in order.

The Court: Admitted.

(The bottle referred to was marked U. S. Exhibit 29 in evidence.)

Mr. Seawell: Q. At this time I will show you another Schenley bottle, number 149428, and ask you if you have seen that bottle before?

(Testimony of R. F. Love.)

A. I have.

Q. Where did you receive it?

A. I received it from Mr. Sanderson with the other bottles.

Q. And did you examine the contents of that bottle? [82]

A. I did.

Q. What did you find it to contain?

A. The contents are the same as the others, and it contains rum.

Mr. Seawell: I will offer Government's Exhibit 30 for identification as Government's Exhibit next in order.

The Court: Admitted.

(The bottle referred to was marked U. S. Exhibit 30 in evidence.)

Mr. Seawell: I will show you Government's Exhibit 31 for identification, number 149429, and ask you if you have seen that bottle before?

A. I have.

Q. Did you examine the contents of that bottle?

A. I did.

Q. From whom did you receive it?

A. I received it from Sanderson with the other bottles.

Q. What does that bottle contain—

Mr. Kennedy: Objected to—pardon me just a moment. Up to this time, your Honor, I believe the witness has testified that insofar as the Schenley bottles were concerned, that he made those tests with a control sample. Now, with reference to these bottles, I think we are entitled to know the exami-

(Testimony of R. F. Love.)

nation he made, because it is apparently a different brand of whiskey.

Mr. Seawell: That is right.

Q. Did you have a control bottle from which you made an examination of this bottle as well?

A. No, sir. [83]

Q. How did you make your examination as to the bottle of Four Roses?

A. I found that the bottle contains caramel——

Mr. Kennedy: Pardon me. The question was how did you make it?

Mr. Seawell: Q. Yes. Did you examine the contents of that bottle? A. Yes, sir.

Q. What did you find in that bottle?

A. I found it contains caramel.

Q. And what else did you find in regard to the proof?

A. The proof was 87.8 instead of 90, according to the label. Slightly under proof.

Mr. Seawell: At this time I will offer this bottle as Government's exhibit next in order—it is marked Government's exhibit 31 for identification—as Government's exhibit next in order.

The Court: Admitted.

(The bottle referred to was marked U. S. Exhibit 31 in evidence.)

Mr. Seawell: I will show you another bottle of Four Roses whiskey, marked 28 for identification, number 149430, and ask you if you have seen that bottle before?

A. I have.

(Testimony of R. F. Love.)

Q. Did you examine the contents of that bottle?

A. I did. [84]

Q. From whom did you receive it?

A. I received it from Mr. Sanderson with the other bottles.

Q. And what did you find the contents of that bottle to contain so far as caramel or other ingredients other than whiskey are concerned?

Mr. Kennedy: Objected to as assuming something not in evidence, no foundation laid.

Mr. Seawell: I will withdraw the question to avoid confusion.

Q. Did you make an examination of the contents of that bottle? A. I did.

Q. What did you find the bottle to contain?

A. I found that the whiskey in it contains caramel.

Q. Did you find what the proof of that bottle was? A. Yes.

Q. What was the proof of the contents of that bottle?

A. 87.6 instead of 90, according to the label.

Mr. Seawell: I will offer Government's Exhibit 28 as Government's exhibit next in order.

Mr. Kennedy: Objected to as incompetent, irrelevant and immaterial and having no relation to the case.

Mr. Seawell: Well, I think it is the very heart of the case. We are showing that the contents of that bottle is 87.6, whereas it is labeled 90 proof, which is off in percentage; we have shown there was

(Testimony of R. F. Love.)

caramel present, and it is [85] against the law to add caramel to straight whiskey.

The Court: Overruled.

Mr. Kennedy: Your Honor, may I say a word in regard to that objection?

The Court: Yes.

Mr. Kennedy: So far as these additional bottles are concerned, the only testimony that there is before the Court at the present time is that some bartenders may have put something in these bottles, but there has been no testimony whatsoever introduced with reference to these defendants.

Mr. Seawell: We have introduced testimony that these were taken from Tony Legatos' bar and that he was the owner of the bar where they came from, and Chris has said in his written statement—so there will be no confusion—he states that the remaining bottles—these are the bottles I am referring to—have been refilled by the bartenders pouring from one bottle to the other. He was fully aware that this was against the laws of the Bureau of Internal Revenue.

Mr. Kenney: May our objection go to the remaining bottles, your Honor, so that we will not have to reiterate?

Mr. Seawell: Q. I will show you another Four Roses bottle, number 149431, Government's Exhibit 27 for identification, and ask you if you have examined that bottle?

A. I did. [86]

Q. From whom did you receive that?

(Testimony of R. F. Love.)

A. I received that from Mr. Sanderson with the other bottles.

Q. And what did you find that bottle to contain?

A. I found that it contains caramel.

Q. And what did you find in regard to the proof?

A. The proof is 87.7 instead of 90, according to the label.

Mr. Seawell: I will introduce this bottle as Government's exhibit next in order.

Mr. Kennedy: Same objection, your Honor, and may my objection go to the balance of the bottles.

The Court: Overruled.

Mr. Kennedy: I beg your pardon?

The Court: I say, same ruling.

(The bottle referred to was marked U. S. Exhibit 27 in evidence.)

Mr. Seawell: Q. I will show you Government's Exhibit number 26, bottle number 149432, for identification, and ask you if you have examined the contents of that bottle? A. I have.

Q. From whom did you obtain it?

A. I received it from Mr. Sanderson with the other bottles.

Q. And did you examine the contents of that bottle? A. I did.

Q. And that is 7-Crown Seagram's Whiskey, is that correct? A. Yes. [87]

Q. What did you find that bottle to contain?

A. I analyzed it for acids, color and solids the same as the Schenley's whiskey.

(Testimony of R. F. Love.)

Q. Did you have a control bottle in this instance?

A. Yes. And comparing the figures with those of the control bottle, I concluded that it was re-filled.

Mr. Kennedy: Pardon me. Your Honor, we ask that conclusions go out——

Mr. Seawell: Well, I will ask you first——

Mr. Kennedy: ——as not responsive to the question.

Mr. Seawell: It may go out at this time.

Q. Will you tell us just what you found in regard to proof, acid, color and solids in regard to that bottle?

A. I found the acids to be 27.6, the control 27.6; the color 10.5, the control 11.5; the solids in this bottle 196 parts, and in the control 179 parts.

Q. And what did you find as to proof?

A. The proof was 87.4 instead of 86.8, according to the label.

Q. The label says 86.8 and it was 87.4?

A. Yes, sir.

Q. Now, doctor, after your examination of this bottle and comparing it with your control bottle, can you state whether or not—what is your opinion, rather, as to whether or not this is Seagram's 7-Crown whiskey?

Mr. Kennedy: Pardon me. Objected to as calling for a matter that is not the subject of expert testimony, but [88] is the whole issue in the case. That is a question for the jury.

(Testimony of R. F. Love.)

Mr. Seawell: This man is an expert. He is testifying as an expert.

Mr. Kennedy: Let him give his findings.

Mr. Seawell: He did. Now this is opinion evidence.

The Court: Proceed.

Mr. Kennedy: May the objection go to the entire line of testimony, so that I won't have to reiterate?

The Court: Overruled.

A. My opinion is that the bottle was refilled.

Mr. Seawell: I will offer Government's exhibit 26 for identification as Government's exhibit next in order in evidence.

The Court: Admitted.

(The bottle referred to was marked U. S. Exhibit 26 in evidence.)

Mr. Seawell: I will show you Government's exhibit for identification number 23, bottle number 149433, and ask you if you have seen that bottle before?

A. I have.

Q. And from whom did you obtain it?

A. I received it from Mr. Sanderson with the other bottles.

Q. And did you make an examination of the contents of that bottle? A. I did. [89]

Q. Will you tell the Court and jury what you found that bottle to contain?

A. I found the proof to be 87.4, the acids 24 parts, the control being 27.6; the color of this whis-

(Testimony of R. F. Love.)

key 10.5, the control 11.5; the solids of this whiskey 191.2 parts, the solids of the control 179 parts.

Q. Now, taking into consideration all of the elements of your test, can you state your opinion as to whether or not this Seagram's bottle has been refilled?

Mr. Kennedy: Objected to upon the ground that is asking for a matter for the jury to decide, and not a matter of expert testimony.

The Court: Overruled.

Mr. Seawell: He can testify to his findings.

A. It is my opinion that the bottle is refilled.

Mr. Seawell: At this time I will offer this bottle, marked Government's Exhibit 23 for identification, as Government's Exhibit next in order.

(The bottle referred to was marked U. S. Exhibit 23 in evidence.)

Mr. Seawell: Q. I will show you a Lord Calvert bottle of whiskey, Government's Exhibit 24 for identification, bottle 149424, and ask you if you have seen that bottle before?

A. I have.

Q. From whom did you receive that?

A. I received it from Mr. Sanderson with the rest of the [90] bottles.

Q. Did you make an examination of the contents of that bottle? A. I did.

Q. What did you find the bottle to contain?

A. I found the proof to be 85.8, whereas the label states that it is 86.8; I found the acids to be 30 parts, and the control bottle to contain 28.8 parts;

(Testimony of R. F. Love.)

the color of this whiskey 11, and the control 8; the solids of this whiskey 181.6 parts, and the control 104 parts.

Q. And from an analysis of this bottle and from your experience on this subject, can you tell the Court and jury what your opinion is as to whether or not it is Lord Calvert whiskey or not?

Mr. Kennedy: Same objection, your Honor, on the ground it is not a subject of expert testimony.

The Court: Overruled.

A. It is my opinion that the bottle is refilled.

Mr. Seawell: I will offer Government's exhibit 24 for identification as Government's exhibit next in order.

(The bottle referred to was marked U. S. Exhibit 24 in evidence.)

Mr. Seawell: Q. I will show you another bottle of Lord Calvert's whiskey, number 149435, which is 25 for identification, and ask you if you have seen that bottle before?

A. I have. [91]

Q. And did you make an analysis of the contents of that bottle? A. I did.

Q. From whom did you obtain it?

A. I received it from Mr. Sanderson with the other bottles.

Q. Will you tell the Court and jury what that bottle contains?

A. I found the proof to be 85.8, whereas the label states it is 86.8; I found the acid content to be 22.8 parts, and the control 28.8 parts; the color

(Testimony of R. F. Love.)

of this whiskey 10.5, and of the control 8; the solids of this whiskey 180 parts, and of the control 104 parts.

Mr. Seawell: At this time I will offer Government's Exhibit 25 for identification as Government's exhibit next in order.

The Court: Admitted.

(The bottle referred to was marked U. S. Exhibit 25 in evidence.)

Mr. Seawell: Q. I will show you a bottle of Old Charter straight—purports to be a Kentucky straight bourbon whiskey, number 149436, Government's exhibit 20 for identification, and ask you if you have examined the contents of that bottle?

A. I have.

Q. And from where did you obtain that bottle?

A. I received it from Mr. Sanderson with the other bottles.

Q. And what did you find that bottle to be, so far as proof [92] is concerned, and what was your examination?

A. The proof of this whiskey is 87.5, whereas the label states that it is 90; and I found caramel in this whiskey.

Q. At this time I offer in evidence Government's Exhibit number 20 for identification as Government's exhibit next in order.

The Court: Admitted.

(The bottle referred to was marked U. S. Exhibit 20 in evidence.)

Mr. Seawell: Q. I will show you another bottle

(Testimony of R. F. Love.)

which purports to be Kentucky straight bourbon whiskey, Government's Exhibit 21 for identification, number 149437, and ask you if you have seen that bottle before? A. I have.

Q. From whom did you obtain it?

A. I received it from Mr. Sanderson with the other bottles.

Q. Did you examine the contents of that bottle?

A. I did.

Q. What did you find it to contain?

A. I found the proof to be 87.8 instead of 90 as stated on the label, and I found it contained caramel.

Mr. Seawell: At this time I will offer as Government's exhibit next in order, Government's Exhibit 21 for identification.

The Court: Admitted. [93]

(The bottle referred to was marked U. S. Exhibit 21 in evidence.)

Mr. Seawell: I will show you what purports to be a bottle of Old Forrester whiskey, which is numbered 149438, Government's Exhibit 22 for identification, and ask you if you have seen that bottle before?

A. I have.

Q. Did you examine the contents of that bottle?

A. I did.

Q. From whom did you obtain it?

A. I received it from Mr. Sanderson with the other bottles.

Q. What did you find it to contain?

(Testimony of R. F. Love.)

A. Found the proof to be 99.4 instead of 100. The acids 79 parts, whereas the control contains 75.6 parts; the color of this whiskey 15, the control 12.5; the solids of this whiskey 204.6 parts, and of the control 164 parts.

Mr. Seawell: I will offer as Government's exhibit next in order Government's exhibit 22 for identification.

The Court: Admitted.

(The bottle referred to was marked U. S. Exhibit 22 in evidence.)

Mr. Seawell: Q. I will show you another bottle which purports to be Old Forrester straight bottled in bond whiskey, number 149439, Government's Exhibit number 14, for identification, and ask you if you have seen that bottle before?

A. I have. [94]

Q. And from whom did you obtain it?

A. I received it from Mr. Sanderson with the ret of the bottle.

Q. Did you make an examination of the content thereof? A. I did.

Q. What did you find it to contain?

A. Found the proof to be 99.5 instead of 100, and I found the whiskey to contain caramel.

Mr. Seawell: I will offer this bottle as Government's exhibit next in order, which is 14 for identification.

(The bottle referred to was marked U. S. Exhibit 14 in evidence.)

(Testimony of R. F. Love.)

Mr. Seawell: I will show you what purports to be an Old Hermitage brand bottle of whiskey. Government's Exhibit 13 for identification, number 149440, and ask you if you have seen that bottle before?

A. I have.

Q. And from whom did you obtain it?

A. From Mr. Sanderson with the other bottles.

Q. And did you examine the contents thereof?

A. I did.

Q. And what did it contain?

A. I found the proof to be 92.3 instead of 93, as stated on the label, and I found the whiskey contains caramel.

Mr. Seawell: I will offer Government's Exhibit 13 for [95] identification as Government's exhibit next in order.

(The bottle referred to was marked U. S. Exhibit 13 in evidence.)

Mr. Seawell: Q. I will show you another Old Hermitage bottle, number 149441, which is marked 15 for identification, and ask you if you examined that bottle?

A. I have.

Q. From whom did you obtain it?

A. I received it from Mr. Sanderson with the other bottles.

Q. Did you make an examination of the contents? A. I did.

Q. What did you find it to contain?

(Testimony of R. F. Love.)

A. I found the proof to be 92.3 instead of 93, as on the label, and also it contained caramel.

Mr. Seawell: I will offer it as Government's Exhibit next in order.

(The bottle referred to was marked U. S. Exhibit 15 in evidence.)

Mr. Seawell: Q. I will show you what purports to be a bottle of Seagram's V. O. Canadian whiskey, number 149442, Government's exhibit 16 for identification, and ask you if you have seen that bottle before?

A. I have.

Q. From whom did you obtain it?

A. I received it from Mr. Sanderson with the other bottles. [96]

Q. Did you make an examination of that bottle as well? A. I did.

Q. What did you find the contents to be?

A. I found the proof to be 85.1 instead of 86.8 as stated on the label; the acids 26.4, the control 27.6; the color of this whiskey, and of the control 6.5; the solids of this whiskey 184.8, and of the control 110.6.

Mr. Seawell: At this time I will offer the bottle numbered 16 for identification as Government's exhibit next in order.

The Court: Admitted.

(The bottle referred to was marked U. S. Exhibit 16 in evidence.)

Mr. Seawell: Q. I will show you another bottle of Seagram's V. O. Canadian whiskey, number

(Testimony of R. F. Love.)

149443, Government's exhibit number 18 for identification, and ask you if you have seen that bottle before? A. I have.

Q. Where did you obtain it?

A. I received it from Mr. Sanderson along with the others.

Q. Did you make an examination of the contents? A. I did.

Q. Will you tell the Court and jury what you found the contents to be?

A. The proof I found to be 85.4 instead of 86.8 as stated on [97] the label; the acids 27.6, the control acids, 27.6; the color of this whiskey 11, of the control 6.5; the solids of this whiskey 187.4 parts, and of the control 110.6 parts.

Q. Now, doctor, can you tell me after your analysis of the last two exhibits as to whether or not they were refilled bottles or were original products?

Mr. Kennedy: Objected to as calling for an opinion and conclusion of the witness.

The Court: If he knows.

Mr. Seawell: If he knows, in his opinion.

A. I have an opinion.

Q. What is your opinion?

A. That the bottles were refilled.

Q. I will show you bottle number 149444, labeled "Blended Scotch whiskey, Johnny Walker Black Label", and ask you if you have seen that bottle before? It is number—I think it is 17 for identification,——

The Clerk: That is right.

(Testimony of R. F. Love.)

Mr. Seawell: —number 17 for identification, and ask you if you have seen that bottle before?

A. I have.

Q. Where did you obtain that bottle?

A. I received it from Mr. Sanderson with the other bottles.

Q. And did you make an examination of the contents of that bottle? A. I did.

Q. What did you find it to contain? [98]

A. Found the proof to be 86.8, which is the same as the label; the solids 21.6 parts, whereas the control was 24 parts; the color of this whiskey 10, of the control 9; the solids of this whiskey 144.2, of the control 182 parts.

Q. Now considering your analysis and your experience in examining these types of whiskey, would you say whether or not in your opinion this is genuine Johnny Walker Black Label whiskey or has been refilled?

Mr. Kennedy: Objected to as calling for a conclusion of the witness.

Mr. Seawell: That is exactly what I am asking him for. He is an expert and qualified for such a conclusion.

The Court: Overruled.

A. It is my opinion that the bottle was refilled.

Mr. Seawell: Q. I will show you another bottle of Johnny Walker Black Label, number 149445, Government's exhibit 19 for identification, and ask you if you have seen the original of that bottle before? A. I have.

(Testimony of R. F. Love.)

Q. Where did you obtain that bottle?

A. I received it from Mr. Sanderson with the other bottles.

Q. Did you examine the contents thereof?

A. I did.

Q. What did you find it to contain?

A. Found the proof to be 86.9, whereas the label states 86.8; [99] the acids 22.8 parts, the control 24; the color of this whiskey 10, of the control 9; the solids of this whiskey 143 parts and the control 182 parts.

Q. Now can you tell the Court and jury from your experience and your examination of the contents of this bottle whether or not that is genuine Johnny Walker Black Label whiskey?

Mr. Kennedy: Objected to as calling for a conclusion of the witness.

The Court: If he knows.

Mr. Seawell: Q. In your opinion.

A. My opinion——

Mr. Kennedy: The court said if he knows.

The Court: I meant in his opinion too. Go ahead.

A. My opinion is that the bottle was refilled.

Mr. Seawell: Q. Now, doctor, after you made the examination of exhibits 1 to 31, what did you do with the bottles?

A. They have been in my possession from the time I received them until I brought them up here.

Q. When you brought them up here, what did you do with them?

(Testimony of R. F. Love.)

A. I left them in your office, in the safe.

Q. You left them in the safe? A. Yes.

Q. Did you seal the carton in my presence?

A. I did.

Q. I will show you the three cartons and ask you if those are the original cartons in which you left them, the seals of which were broken this morning?

A. Yes, I did. [100]

Q. You were present when they were taken out of the safe this morning? A. Yes.

Q. And the seals were in the condition as they were when you sealed them? A. Yes.

Q. And you placed your initials on the seals half on the top and half on the bottom?

A. I did.

Mr. Seawell: That is all.

Cross Examination

Mr. Kennedy: Q. Doctor, relative to this last exhibit, this Johnny Walker bottle, did you have a control sample on this? A. Yes, sir.

Q. And when did you procure it?

A. Well, I can't say now. I don't have the identification of that bottle with me.

Q. You don't have the identification of this bottle? A. Of the control bottle.

Q. The control bottle? A. Yes.

Q. And relative to making a control, doctor, did you take separate controls on each one of these and make a particular examination?

A. You mean a separate control for each bottle of Johnny Walker?

(Testimony of R. F. Love.)

Q. Yes.

A. No, I used the same control for all the bottles of the same brand.

Q. Well, relative to that control, I mean did you obtain a particular bottle of Johnny Walker Black Label whiskey in order [101] to test it against this bottle here?

A. I had a bottle which was labeled exactly the same as that, yes.

Q. And did you procure it for the purpose of making this particular test?

A. Well, I can't say as to that now, but we have——

Q. In other words, when did you procure that control bottle of Johnny Walker whiskey?

A. I can't say now.

Q. Can you give us any approximate time?

A. No, except within the last—or within a few months of the time I received that bottle.

Q. Yes. Well, relative to these so-called control bottles, so that it may be clear, what you did is go down and get a bottle, that is, an unopened bottle, and make certain tests from it, and that is the so-called control? Am I correct in that?

A. Yes, sir.

Q. Now, how many control bottles of Johnny Walker's Black Label have you had, we will say, in the last three years?

A. Oh, not very many. Maybe half a dozen.

Q. Half a dozen? A. Something like that.

(Testimony of R. F. Love.)

Q. And you have run these controls off of them, have you not? A. Yes.

Q. Do you have variations in the controls?

A. Oh, yes.

Q. In the Johnny Walker bottles? [102]

A. There are slight variations between controls, yes.

Q. Now, doctor, to be entirely fair with the members of the jury on the matter of proof, we will say, how far will the control bottles vary in proof?

A. Oh, one degree, possibly more—a little more.

Q. One degree or possibly more?

A. Yes.

Q. You are talking now about actual control bottles, aren't you, doctor? A. Yes, sir.

Q. These bottles that you go out and procure from a wholesaler or someone whom you have every confidence in has not tampered in any way with the bottles and on the basis of those controls they will vary from one to possibly more in the degree of proof? A. Yes.

Q. That is your testimony. Now, with reference to a control bottle where it is not being tampered with at all, the factors of heat, the factors of corked or non-corked will change the proof in that bottle, will it not?

A. You mean in a control bottle?

Q. Yes, in a control bottle that has been opened, but not tampered with.

A. Why, I don't think I understand just what you are getting at.

(Testimony of R. F. Love.)

Q. I am sorry, doctor; I know you want to. My question is this: We will take a bottle, for instance, Johnny Walker's Black Label whiskey, and the bottle will be opened and the contents will in no wise be tampered with at all, and over [103] a period of time, depending upon weather, light conditions, and also the fact that the bottle is open, the proof in the bottle will change, will it not?

A. No, sir.

Q. In other words, doctor, is it not true that insofar as an open bottle of spirits is concerned, that part of the proof will evaporate?

A. When I receive a control bottle, I analyze it immediately when I open it.

Q. Doctor, you don't understand my question. Maybe I have confused you and confused everyone else by using the word "control", so I will eliminate the factor of control; but my question is this: If you take any bottle of spirits and leave it open for any considerable length of time, the proof in the bottle is likely to change, is it not?

Mr. Seawell: I don't think that question is intelligible. I don't understand what you mean by "open". Do you mean in a bottle with the cork off or pouring it in a pan——

Mr. Kennedy: Well, strike it out just to obviate the argument.

Mr. Seawell: I don't know what you are talking about.

Mr. Kennedy: Q. Doctor, is it possible for the proof of a bottle of distilled spirits to change with-

(Testimony of R. F. Love.)

out their being the addition of any foreign substance? A. What kind of a bottle?

Q. Well, you are the expert. We would like to get—— [104]

Mr. Seawell: No, that is reasonable. Do you mean a bottle with a cork or do you mean a bottle without a cork, or a bottle with an opened cork? What are you referring to? That is what the witness is asking. That is a reasonable question. He doesn't know what you are talking about, and I certainly don't know what you are talking about.

Mr. Kennedy: Q. Will the proof of whiskey change, or will it always remain constant?

Mr. Seawell: I object to the question as unintelligible. Mr. Kennedy doesn't state what he means by an open bottle. Do you mean if you open the bottle and leave the top off to ask the chemist whether or not evaporation takes place, why ask him that question, but——

Mr. Kennedy: I prefer to ask in my own way, Mr. Seawell.

Mr. Seawell: I object to the question as unintelligible and the doctor can't answer it.

Mr. Kennedy: Maybe he can.

The Court: Proceed, gentlemen.

Mr. Kennedy: Do you understand the question, doctor?

A. I don't know whether you mean a bottle standing with a cork out of it——

Q. No, that is not my question at all. Under

(Testimony of R. F. Love.)

any circumstances at all will the proof of whiskey change?

A. It will, if it is left in an open container, yes.

Q. Yes. Now, doctor, if whiskey is left in an open container—[105] we will say the open container would be an uncorked bottle——

A. Yes.

Q. ——what would be the variation in proof in that regard?

A. It would depend on the time the bottle is open. If it is left open long enough the proof and the whole contents will disappear entirely.

Q. So insofar as the question of proof is concerned—let's strike out that question too. Doctor, every brand of whiskey—or we will take a brand of whiskey, insofar as any particular batch is concerned, it is not necessarily identical with other batches of whiskey of the same brand? For example, the Johnny Walker Black Label whiskey that was turned out in the fall of 1939 may bear no relation in exactitude to the whiskey that was turned out—the same brand of whiskey that was turned out in 1935, is that correct?

A. It would be almost exactly the same.

Q. Almost exactly, but there would be a difference?

A. Slight difference.

Q. There would be a difference, depending on the mash used and the grain used, or the district where the grain came from, all those factors have to be taken into consideration, do they not?

A. Yes.

(Testimony of R. F. Love.)

Q. It is also true, is it not, doctor, that insofar as two batches of whiskey are concerned, they are never exactly the same in all respects?

A. Not exactly, but they are very closely usually, because of the fact that they are all made out [106] of the same proposition, made in the same still, in the same way and aged in the same warehouse.

Q. Yes, but insofar as some brands of whiskey are concerned, for instance Schenley's whiskey, that is not true so far as Schenley's whiskey, they are not made in the same still and aged in the same warehouse, are they?

A. Blended whiskey is more likely to vary, yes, because of being made of different materials.

Q. That is, most of them come from different districts? Some come from Pennsylvania, some come Kentucky, some come from Iowa?

A. Yes, sir.

Q. And there is no way, doctor, in any test that you have made, that you cannot say that that is not 100 per cent pure Scotch whiskey?

Mr. Seawell: No, pure Johnny Walker Scotch whiskey, Black Label.

Mr. Kennedy: No, Scotch whiskey.

Mr. Seawell: I object to the question as not within the issues of this case. They might put one dollar Scotch whiskey, if there is such a thing, in a five dollar Johnny Walker Black Label bottle. That is what we are leading to. They might put Scotch whiskey in there, but the question before this Court is whether or not that is Johnny Walker

(Testimony of R. F. Love.)

Black Label, which is expensive whiskey. It is a lot different from——

Mr. Kennedy: Let me ask you this: You, of course, [107] weren't at the distilleries when these bottles were filled, were you? A. No.

Q. So you don't know what went into the bottles? A. No, sir.

Q. Will you answer the question, doctor, insofar as your ability to say whether or not it is or is not Scotch whiskey?

Mr. Seawell: I object to that as incompetent, irrelevant and immaterial and no bearing on the issues of this case.

Mr. Kennedy: Well, it goes to the whole substance of his test, I mean as an expert, which he has offered himself here as, and I certainly can test his qualifications to see whether or not he can say at least it is not Scotch whiskey.

Mr. Seawell: He said it wasn't Johnny Walker Black Label Scotch whiskey. That is the issue.

Mr. Kennedy: He stated in his opinion it was not Johnny Walker Black Label Scotch whiskey. First I want to find out if, in his opinion, it wasn't Scotch whiskey, and then——

The Court: Overruled.

A. I wouldn't say it wasn't Scotch whiskey at all in the bottle. It is my opinion it wasn't all Black Label.

Mr. Kennedy: Q. Doctor, my question is this: Can you state positively as a fact that wasn't Scotch whiskey? A. No, I didn't say that.

(Testimony of R. F. Love.)

Q. Now, can you state positively as a fact that whiskey was not bottled by the Johnny Walker Company and was part of the [108] original contents of the bottle?

Mr. Seawell: Just a moment. Mr. Kennedy is asking this man to testify positively as a fact. This man is only an expert witness. He doesn't purport to be testifying as to facts. He is a chemist and he is an expert in his line. He is testifying to what he found and testifying that in his opinion after an analysis what the bottle contained. He doesn't pretend to have been at the Johnny Walker factory when they made this whiskey and followed that bottle of whiskey from where it was made out to California and watched it all the time. He has only testified as an expert witness—

Mr. Kennedy: Just a moment. I will just clear up the matter on that.

Q. Doctor, you do have tests and examination which do rather consistently tell whether whiskey is Scotch or Bourbon, do you not? By which you can make that determination almost immediately?

A. Yes; if they are not mixed, of course. If they have a mixture, sometimes it is impossible to tell.

Q. But you can't always ascertain whether or not it is Scotch whiskey?

A. If it is predominantly Scotch, yes.

Q. To what degree of predominance—I will relieve you of the bottle, doctor; you don't have to keep holding it—to what degree would the variation be, doctor?

(Testimony of R. F. Love.)

A. To the degree that the characteristics of the Scotch or the [109] Bourbon, whatever it may be, can be identified. There is no fixed limit to that.

Q. Well, that, of course, doesn't mean a lot to we people who are not chemists. I understand it is a very accurate distinction; could you translate that into the form of a percentage, or give us some example so we can understand that?

A. If you are talking about solid bottles, it is very easy to distinguish between Scotch and Bourbon, but if you are talking about a mixed bottle, it is very hard to tell. A bottle that contained a lot of Scotch whiskey and a little Bourbon, it would be impossible to tell the Bourbon.

Q. With a little Bourbon?

A. That is right.

Q. But if it contained a good percentage——

A. If it contained a good percentage, yes.

Q. What percentage? Can you fix the limit?

A. I couldn't say, I couldn't give you any idea.

Q. You can give us no idea at all. Then, doctor, insofar as the examination of the bottle is concerned, or of its contents, I believe your testimony is this, that you weren't able to say from this examination of the bottle as to whether the whiskey is Scotch or Bourbon, or perhaps a combination of Bourbon and Scotch or Canadian whiskies?

Mr. Seawell: Are you speaking of this particular bottle, Mr. Kennedy?

Mr. Kennedy: Speaking of his testimony, yes.

Mr. Seawell: Well, just limit it. It is unintelli-

(Testimony of R. F. Love.)

gible to me. I don't know whether the doctor understands it or not. Are you talking about this bottle, or are you changing the subject?

Mr. Kennedy: You may have the question read, if you didn't understand it.

Mr. Seawell: Yes, may I have the question read?

(Question read by the reporter.)

Mr. Seawell: All right, he is referring to the same bottle.

The Witness: Are you referring to that bottle of Black Label?

Mr. Kennedy: Yes.

A. It is my opinion that that bottle——

Mr. Kennedy: Q. No, doctor, my question——

Mr. Seawell: Let him answer.

Mr. Kennedy: He may explain his answer, Mr. Seawell, but my question is "Are you able to determine"?

A. I can't answer that yes or no.

The Court: Determine what?

Mr. Kennedy: Determine if it is Scotch whiskey or a mixture of Scotch and Bourbon or a mixture of Scotch and Canadian whiskies.

Mr. Seawell: He has already answer that, he has already stated that if the percentage of one or the other is [111] predominant, under certain conditions he can, and under conditions he can't. If this was 90 per cent Scotch, and a little Bourbon in there, he said he could not. That would be his testimony.

(Testimony of R. F. Love.)

Mr. Kennedy: Q. You can't answer that question, doctor?

A. I can't answer it yes or no, I can only give an opinion.

Q. My question is this: From the contents of the bottle itself you can't determine; any judgment that you make will be based upon a control?

A. Not necessarily, no.

Q. What other factors enter into it, doctor?

A. I have had so many bottles that have been labeled Scotch whiskey, and the analysis was so far different from any known brand of Scotch whiskey, that I knew it could not possibly be a Scotch whiskey, without any control, just from my general knowledge of Scotch whiskey.

Q. Was that true of this bottle? A. No.

Q. So under certain very radical circumstances you can tell whether it is Scotch whiskey or Bourbon whiskey or some type of mixture?

A. Yes.

Q. That is not true of this bottle. But in the case of this bottle, however, all your opinion and your entire testimony and your conclusions are based upon comparisons with the control?

A. That is right.

Q. That is, the proof is one factor?

A. Yes. [112]

Q. And the proof, you say, in the controls, may vary from one degree? A. Yes.

Q. And the proof of this particular bottle, I believe, number 445, is 86.8—is that the control bottle?

(Testimony of R. F. Love.)

A. Yes, that is what the label states it should be.

Q. And this is 86.9? A. Yes.

Q. Now, in testifying that the proof will vary one per cent in the control bottles, that would mean that it would vary from 87.8 to 85.8? A. Yes.

Q. Doctor, insofar as solids are concerned in Scotch over the period of your experience for two or three years, speaking specifically of controls on Johnny Walker's Scotch, what will the variation be?

A. I can't give any figures now to cover the total variation, but it is relatively small. Scotch whiskey is very true to form. They are nearly all alike.

Q. Recalling your attention, doctor, to the examination you made of *Ciro's* in Los Angeles, where you took certain controls there of Johnny Walker's Scotch, did you not, of Black Label?

Mr. Seawell: You mean that case down there where they pleaded guilty? What case are you talking about?

Mr. Kennedy: Your Honor——

Mr. Seawell: What case are you talking about, *Ciro's*?

Mr. Kennedy: ——I request the Court to admonish the jury to disregard the remark of counsel. My question is [113] before the witness.

Mr. Seawell: I have a right to know what you are talking about.

Mr. Kennedy: I am asking Dr. Love a direct question if he didn't make an examination of two bottles of Johnny Walker's black label whiskey in a case involving *Ciro's* in Los Angeles.

(Testimony of R. F. Love.)

Mr. Seawell: Where and when? Let's get the time, place and persons present. Let's find out what case you are talking about. No foundation laid. I object to the question on that ground.

The Court: Sustained.

Mr. Kennedy: Q. Do you recall making an examination of Johnny Walker Black Label in connection with a case against Ciro's in Los Angeles?

A. Of course I remember the case, and I remember we had quite a number of different brands of whiskey, but as to any particular bottle, I don't remember.

Q. You have no recollection of Johnny Walker Black Label? A. No.

Q. I will ask you this question on that point: Isn't it a fact that so far as solids in whiskey are concerned, that they will vary as much as 60 points?

A. I can't answer that from memory.

Q. What would be the maximum variation in points? A. Oh, I can't say. [114]

Q. You have no recollection at all?

A. No, sir.

Q. Now, with reference to acids, what will the variation be in the control bottles?

A. It is the same as with the solids, the variation is not very great, but I can't give any actual figures.

Q. Well, doctor, of course we are laymen, and "very great" and "some percentage" don't mean very much to us. I believe your testimony is based on certain conditions, and I think we are entitled to know what the variations will be in control bottles.

(Testimony of R. F. Love.)

So if you can give us the result of your experience so far as Scotch is concerned, we would appreciate it. Would you say it would be as much as five points? A. Yes.

Q. Then in this case what would you say would be the general mean, doctor? In other words, is it around 20 or 24 or 25 or 35? What is the mean insofar as your acids are concerned?

A. The meaning?

Q. The mean for a run of control bottles. Maybe 30 or 40? From the best of your recollection and experience.

A. Well, I can't tell you that, because we don't use that figure, we use a particular bottle for a control, we don't use batches.

Q. Yes, but these particular control bottles vary, do they not?

A. I use one bottle to compare with another one bottle. [115]

Q. Yes, but if you took a control bottle two years ago and made a test insofar as the acids are concerned, and you took another control bottle, we will say this year, and made the same tests, there would be variations? A. Not very much.

Q. Well, there would be variations, however?

A. There might.

Q. Might be?

A. They might be identical. It very often happens that the figures are identical.

Q. And it quite frequently happens that you have variations, doesn't it? A. Yes.

(Testimony of R. F. Love.)

Q. Because of different conditions under which the whiskey was made? A. Yes.

Q. In other words, doctor, they may follow the same formula and use the same materials, but they never will get the identical result in the making of any whiskey, is not that correct?

A. We do have identical figures in some bottles, yes.

Q. Now can you give us any help at all as to what the variation will be among the control bottle as to solids?

A. If I could go back to that previous question, one of the samples in evidence, 7-Crown, the acids—

Q. No, I am talking about this bottle here, doctor, I am talking about Johnny Walker Black Label.

A. You want to know about the figures being identical—— [116]

Q. Pardon me?

A. You want to know about the figures being identical. I said sometimes they are identical, and I have one illustration here I would like to show you. The 7-Crown whiskey, I found 27.6 parts of acids, and the control bottle was 27.6. The identical figure.

Q. I don't think you understood my other question, doctor—it may be a minor detail—I said that the product would never be identical; I didn't say that the figures would not be identical. But going back to our question now, can you give us your best testimony as to what the variation will be among

(Testimony of R. F. Love.)

the control bottles in Johnny Walker Black Label whiskey as far as the acids are concerned?

A. I can't give very definite figures from memory, but as I said before, the various brands of Scotch whiskey are very uniform, and I doubt whether the acids in Black Label Scotch would vary five points.

Q. Would vary five points?

A. Yes. That is, over a period of years. We have been analyzing these samples for years, and we have found that the Scotch whiskey is very uniform over a great many years.

Q. And in this case the control bottle was 24, so a variation—if we assumed that might be a general average, the variation might be from 29 to 19 insofar as acids are concerned, isn't that correct?

A. Yes. [117]

Q. And the variation here where your control bottle was 24 and the sample—that is Exhibit number 19—was 22.8 comes within the percentage of variation?

A. Yes, sir.

Q. Now, doctor, what is the test that you make on color?

A. I use an instrument which is called a tintometer.

Q. And how is that used, doctor? Can you give us what the process is?

A. It is a small glass cell with parallel sides so that an exact thickness of liquids is contained in it. We use a half inch cell, which means that the thickness of the liquid through the cell is exactly one-

(Testimony of R. F. Love.)

half inch, and certain colored glass slides are matched against that half-inch of liquid and slides are added until the color of the slides exactly matches the color of the whiskey. Each one of those slides has a number on it, and the numbers are added, so when I say a whiskey has a color rating of 10 it means that the slides, the brown slides which I used to match the color of whiskey added up to 10.

The Court: Ladies and gentlemen of the jury, we will now recess for 15 minutes. Remember the admonition heretofore given you by the Court.

(Recess.)

The Court: The Clerk will call the roll of jurors.

(Roll called.) [118]

The Clerk: They are all present, sir.

The Court: You may proceed.

Mr. Kennedy: Q. You had explained, Mr. Love, the manner of testing color, and, in short, it is a photo-electric measurement, isn't it?

A. No, it is not a photo-electric, it just makes use of the eye alone.

Q. You don't use the photo-electric measurement in these cases? A. No.

Q. Have you ever used that? A. No.

Q. Now, insofar as the control bottles are concerned, we will take a dozen control bottles, what will the variation in color be in points?

Mr. Seawell: That is color you are talking about?

(Testimony of R. F. Love.)

A. Again I can't answer very well. I don't remember the variations.

Mr. Kennedy: Q. Well, in the case of Scotch, which is a light whiskey, it will be not as great as in some of the other whiskies, of course? That is true, isn't it? In other words, your heavy bourbons will vary a great deal more in color than the light Scotches?

A. More variation.

Q. Yes, and would you say that the variation could be as much as three points?

A. Yes, it might possibly.

Q. In the control bottles? A. Possibly.

Q. Now the control bottle here was 9?

A. Yes, sir. [119]

Q. And the sample that you worked with was 10?

A. Yes, sir.

Q. And it came within the variation?

A. Yes, sir.

Q. Now insofar as solids are concerned, can you reflect somewhat more directly and give us some estimate of what the variation will be in solids so far as Johnny Walker Black Label Scotch is concerned? That is, the control bottles?

A. I think ten or fifteen parts probably would be the maximum.

Q. It will go as low as 120 sometimes, will it not?

A. No, I don't think Black Label will, no.

Q. What would you say the lowest it would go is, sir? A. Well, I don't remember.

(Testimony of R. F. Love.)

Q. 130 wouldn't make you suspicious in a control bottle, would it? A. 130?

Q. In the control bottle.

A. I wouldn't expect to see Black Label that low. The one I used was 182.

Q. But it can drop much lower than that?

A. As I say, the best I can remember now is it probably wouldn't be more than 10 or 15 points lower than that, but I can't remember exactly.

Q. But you can give us no positive testimony what the variation would be?

A. No, I can't remember.

Q. So now just take in your own findings here, Mr. Love, insofar as this Scotch is concerned, this particular bottle [120] of Scotch, each one of them, with the exception of solids, comes within the limits of variations that you have enumerated, that is, so far as proof is concerned, the color is concerned, the acids are concerned, and you could very well anticipate that you might take a bottle of Johnny Walker Scotch as a control bottle and find those ingredients in the percentages that you have enumerated for the sample bottle?

A. No, I don't think so. I think the solids are too far off.

Q. No, I said leave off the solids, on which you have given us no specific testimony.

A. Well, that is true for the possible control bottles, and the control bottle I used here was the—was the latest control bottle I had.

Q. Well, it is only fair for the jury to know,

(Testimony of R. F. Love.)

is it not, Dr. Love, that insofar as a control bottle is concerned, that there will be wide variations?

A. No, I wouldn't say wide variations.

Q. Well, I mean in the percentages that you have given us?

A. Well, those are not very wide variations.

Q. Well, for instance we will take the proof here. You wouldn't consider the factor of one-tenth of one per cent as being an indication——

A. No.

Q. You would discount that entirely, because you allowed a one per cent variation?

A. I would leave the proof out in all of these, except in two or three cases where the proof [121] was 97 instead of 90, but the others weren't enough to make a point of.

Q. That is in every bottle that is here insofar as the proof is concerned? A. Yes.

Q. And then again so far as color is concerned, in reference to this particular bottle, that some comes within the limits of permissible variations?

A. Are you talking now about that Black Label?

Q. Yes, this bottle.

A. It is within the possible range, but compared with the control which I used, which is the best control I had at the time, I would say it wasn't.

Q. And likewise with the—and again I say it is only fair for the jury to know that if you had taken another bottle from a different place, from a different batch of Johnny Walker, maybe a bottle three

(Testimony of R. F. Love.)

or four years old, that there would be no—that control would not be identical with the one you used?

A. It might not be identical, no.

Q. And the same is true with the acids?

A. Yes, sir.

Q. Now, generally, doctor, with reference to your testimony on the variation in proof, color, acids, solids, that is true with reference to—excluding the 14 Schenley bottles, that is true with reference to all of these bottles, is it not, that the controls will vary? [122]

A. Yes, they will vary some.

Q. And generally within the limits that you have remarked for the bottle of Johnny Walker Black Label?

A. I think so, yes.

Q. Doctor, you didn't tamper with these stamps in any way at all, did you?

A. Cancel them?

Q. Tamper with these stamps in any way?

(The witness shook his head in a negative manner.)

Q. And these stamps are the type where you take off the top or the cork, why the stamp is broken?

A. Yes.

Q. And every stamp was destroyed when it came into your possession?

A. Was cut, yes.

Q. Cut by removing the stopper?

A. Yes.

Mr. Kennedy: That is all.

The Court: Do you wish to call the next witness?

Mr. Seawell: Mr. Brannely—

Mr. Brannely: No, I have no questions, your Honor.

(Testimony of R. F. Love.)

Redirect Examination

Mr. Seawell: Q. Referring to the bottles of Four Roses which are in evidence here, in your analysis you found caramel in these bottles of Four Roses. Did you ever find in a control bottle of straight whiskey any caramel at all?

A. No, sir. [123]

Q. And I see that occurred also in these bottles of Old Charter whiskey, that you found in those caramel present. Did you ever find caramel in any control bottles?

A. No, sir, not in straight whiskey.

Q. Not in straight whiskey, and these purport to be straight whiskey. In other words, those are not straight whiskies, is that not true? Where they have caramel?

A. No, sir.

Q. And in Old Hermitage, did you ever find any caramel in an Old Hermitage bottle, which happens to be Government's Exhibit 13?

A. No, sir.

Q. It purports to be straight whiskey. And you found caramel in the two bottles of Old Charter you examined, is that correct?

A. Yes, sir.

Q. And you never find any rum in any Schenley Reserve whiskey?

A. Not in an unopened bottle.

Q. There shouldn't be any rum in a whiskey bottle?

A. No.

Q. And the variation where you use a control bottle—take for instance the Lord Calvert bottle which is number 149445, I notice the solids in that

(Testimony of R. F. Love.)

case, the sample was 180 and the control was a hundred. That is a variation of 80, practically—79.6. Would you say there was any possibility of being any error in that case that that was not a refilled bottle? A. No, sir, I don't think so.

Q. And in the bottle that Mr. Kennedy was talking about, the control was 182, and the sample was 143. That would be a variation of 39 per cent. Is there any question in your mind when you have such a variation in solids as to whether or not this Johnny Walker Black Label bottle he is referring to does not contain Johnny Walker Black Label Scotch whiskey? A. No, sir.

Q. In other words, as to every bottle you have been examined about today, it is your opinion as an expert that every bottle—in other words, from number 149415 to 149445 inclusive—is a refilled bottle, is that correct? A. Yes, sir.

Mr. Kennedy: Objected to as calling for a conclusion of the witness, and leading and suggestive.

Mr. Seawell: I am asking for his opinion as an expert witness.

Mr. Kennedy: Ask him what his testimony is, Mr. Seawell, don't tell him. Let him speak for himself.

Mr. Seawell: Q. I will ask you this, then, put the question this way, doctor: In your opinion were all the bottles, number 149415 to 149445, which are Government's exhibits 1 to 31, inclusive, refilled bottles?

Mr. Kennedy: Objected to as calling for a con-

(Testimony of R. F. Love.)

clusion of the witness on a vital issue involved in the case.

Mr. Seawell: In your opinion, based on an analysis of [125] each and every bottle, as an expert witness, is that true?

Mr. Kennedy: Same objection, your Honor.

The Court: What is the question?

Mr. Seawell: I have asked him in his opinion—I have asked him about a number of bottles—I am simply doing it to save time—he has testified as an expert witness to a number of bottles, but I think in trying to hurry this morning I eliminated two or three bottles, and I am simply asking him if, in his opinion as an expert witness, after examining each and every bottle he has referred to, if in his opinion all the exhibits, 1 to 31, are refilled bottles.

Mr. Kennedy: Objected to on the same grounds.

The Court: Overruled.

A. It is my opinion, yes, sir.

Mr. Seawell: That is all, doctor.

Mr. Kennedy: That is all. [126]

LAVERNE LEWIS,

called for the Government, sworn.

Direct Examination

Mr. Seawell: Q. Mrs. Lewis, where do you reside? A. 910 Seventh Street.

Q. Sacramento? A. Sacramento.

Q. And how long have you lived in Sacramento?

(Testimony of Laverne Lewis.)

A. I have lived here about 25 years, I would say.

Q. And have you been employed by Tony Legatos, the defendant in this case?

A. Yes, I have been.

Q. And were you employed by him from, oh, we will say from the first day of August, 1945, and prior thereto for several years?

A. I went to work for him, I would say, the first of 1941.

Q. The first of 1941, and you worked for him continuously until when?

A. Well, until just very recently, the last few days.

Q. The last few days?

A. Yes, I was off about seven months during that time.

Q. But you were working for him, we will say, around the first of 1945 until the end of 1945, is that correct?

A. Yes.

Q. For that one year particularly we are interested in?

A. Yes, sir. [127]

Q. And what were your duties in connection with the operation of Mr. Legatos' business?

A. Well, I was a clerk in his place, or book-keeper, whatever—like that.

Q. Where was his office located during that period, 1945?

A. 220 Ochesner Building.

Q. Do you recall sometime in February or thereabouts in 1945 having a conversation with Mr. Legatos in regard to the disposition of a large quantity of rum that he had obtained?

(Testimony of Laverne Lewis.)

A. Yes, I do.

Q. And where did the first conversation that you recall in that regard take place?

A. Took place in the Log Cabin Tavern.

Q. Do you know who owns that Tavern?

A. Mr. Legatos.

Q. And what was said by Mr. Legatos at that time to you? Was anyone else present that you recall?

A. No, I don't recall anyone else present at that time.

Mr. Kennedy: Your Honor, I object to any conversation relative to Chris Maritsas, on the grounds that he wasn't present.

Mr. Seawell: Yes, that is correct. This will be limited to Mr. Legatos.

Q. And what was said by Mr. Legatos at that time?

Mr. Brannely: Just a moment. There is no proper foundation before the Court and we object to it on that ground.

Mr. Seawell: Well, maybe the time can be fixed more [128] certain.

Q. What is the time, the month or day, as far as you can recall?

A. I would say it was around the first of February, between the first and fifteenth of February.

Q. First of February, what year?

A. 1945.

Q. Now, what was said by Mr. Legatos at that time in regard to this large quantity of rum?

(Testimony of Laverne Lewis.)

A. He said, "I have got 40 or 50 cases here and I am going to move it."

Q. Did he tell you how he was going to move it?

A. He said, "I am going to give each one of my managers so much and ask them to press it in their sales."

Q. Do you know where this rum was stored at that time? A. 701 J.

Q. And do you know whether or not it was moved from those premises? A. Yes, I do.

Q. And do you know whether or not a large quantity, a large number of cases of it was moved to 621 K Street, the Golden Tavern?

A. I know some of it went there, I don't know how much.

Q. And did you hear Mr. Legatos on other occasions refer to this rum and state that the managers had to get rid of it?

Mr. Brannely: Just a moment. That is leading and suggestive.

A. Just press the sales.

Mr. Brannely: Just a moment. That is leading and suggestive, your Honor. We object to it on that ground. [129]

Mr. Seawell: Q. Well, what did you hear him say? Did you hear other conversation in regard to this rum?

A. No, only what I had to say to him myself, what we talked over between ourselves.

Q. What was said at that time by yourself and Mr. Legatos?

(Testimony of Laverne Lewis.)

A. He said, "I am going to get rid of this rum and brandy." He said, "I am overstocked on it."

Q. Now do you know who owns the premises at 621 K Street, Sacramento, who owns the business at that location, the Golden Tavern?

A. Yes, Mr. Legatos does.

Q. You have kept the books on that?

A. I have helped on that, yes.

Q. Now, are you acquainted with the other defendant, Chris Maritsas? A. Yes, I am.

Q. Did you know he was working for Mr. Legatos in 1945 as manager? A. That is right.

Q. And do you know how long he had worked for Mr. Legatos?

A. Well, before I went to work for him.

Q. Well, he was working there at least in 1941, is that correct, when you went to work there?

A. Yes, sir.

Q. And he still was working for him up to a few days ago when you quit, is that correct?

A. Yes.

Q. Now do you remember having a conversation with Mr. Chris Maritsas sometime after July 19, 1945, in regard to this rum which is in question in this case? A. Yes, I do. [130]

Q. And where did that conversation take place?

A. At the Royal Grill on Sixth Street.

Q. Who was present besides yourself?

A. Oh, there was several people there.

Q. Do you recall who they were? A. Yes.

Q. Who?

(Testimony of Laverne Lewis.)

A. George Klostos and John Lambreth.

Q. Do you recall what Mr.—when was that, so far as time is concerned, in months and days, as near as you can recall?

A. Well, the conversation was about three months ago.

Q. And what was said by Mr. Maritsas at that time in reference to this rum?

Mr. Brannely: Your Honor, I object to any conversation in reference to a conversation on behalf of the defendant Mr. Legatos. He wasn't present at that conversation.

Mr. Seawell: That may be limited to Mr. Maritsas.

Q. What was said by yourself, and what was said by him at that time?

A. I asked him why in the world did he ever put the rum in the bottles there, or the brandy, whatever he did. He said, "I didn't think I was doing any harm to anybody, because the rum cost more than the Schenley's."

Q. Did he state at that time that he had put rum in some of these bottles which are in question in this case?

Mr. Kennedy: Objected to as leading and suggestive.

Mr. Seawell: Well, I will withdraw the question. [131]

Q. What did he state in regard to how the rum got into the bottles which are Government's exhibits 1 to 31?

(Testimony of Laverne Lewis.)

A. He said he wouldn't put it in there if he thought it was doing any harm to anybody, because the rum cost more than the Schenley's.

Mr. Seawell: That is all.

Cross Examination

Mr. Brannely: Q. Mrs. Lewis, at this conversation you had with Mr. Legatos in February, the first part of February, 1945, you stated, I believe, that at 701 J Street there was 40 or 50 cases of rum?

A. Yes.

Q. And, of course, you being an employee of Mr. Legatos for a long period of time, you had personal knowledge of the fact that he not only had on sale premises in connection with his business, but he also had off sale premises?

A. That is right.

Q. Yes. Now you know that the 40 or 50 cases of rum that were on hand at 701 J Street were taken to other places, don't you? I believe you testified to that, Mrs. Lewis?

A. That is correct.

Q. Yes. And was some of that rum taken to the off sale premises?

A. He only has one off sale premises.

Q. Where is that?

A. At 622 K.

Q. 622 K. And did he not have any off sale premises at other [132] locations?

A. Not at that time he didn't.

Q. Not at that time. How many places, do you know, during that period of time, if you know, did

(Testimony of Laverne Lewis.)

Mr. Legatos own? That is, with alcoholic beverage licenses.

A. You want where he was sole owner or partner, or what?

Q. Either way, in which he was interested.

A. Well, there is the Lunchette, a partner there; Tony's Cafe, he is the sole owner; the Red Front, he is a partner; the Empire, he is a partner; and the Golden.

Q. That is in Sacramento? A. Yes.

Q. And you know that he has business interests in connection with that business outside of the City of Sacramento, too? A. That is right.

Q. Located at different places in the northern part of California, isn't that correct?

A. Uh huh (yes).

Q. Yes. Can you tell us, if you know, without enumerating the number of places, Mrs. Lewis, approximately how many of these establishments he is interested in?

A. Oh, I would say he has about five places in Vallejo.

Q. About five additional places in Vallejo?

A. In Vallejo. Not all of them with liquor.

Q. Yes. Well, he is a restaurant man, isn't he, as well as a tavern operator?

A. That is right. [133]

Q. And he conducts quite a few restaurants in the northern part of the State of California? That is true, isn't it? A. Yes.

(Testimony of Laverne Lewis.)

Q. Now, he never told you—in this conversation with you I imagine that your relationship with him was very pleasant at the time, isn't that correct?

A. Yes.

Q. And he merely said that he had the 40 or 50 cases of rum there and he wanted to get rid of it and wanted to send it to his other places, isn't that correct?

A. Yes.

Q. He never said anything about mixing rum with whiskey, did he, Mrs. Lewis?

A. No. I didn't want to convey that idea.

Q. You didn't want to convey that idea?

A. No.

Q. And you, of course, have been an employee of his up to a short time ago for a good many years? That is your testimony? That is correct, is it not? You know of your own knowledge, do you not, Mrs. Lewis, that Mr. Legatos insists that his places be operated according to the law and within the law? You know that, don't you? Do you know that, Mrs. Lewis?

A. Yes.

Mr. Brannely: You do. That is all. Cross examine.

Mr. Seawell: Just a moment.

Mr. Brannely: I mean, redirect, if you have any.

Redirect Examination

Mr. Seawell: Yes. [134]

Q. Have you talked to anyone about this case since we talked together yesterday?

A. Yes, I have talked to lots of people.

Q. Who?

(Testimony of Laverne Lewis.)

A. My phone has rang incessantly since this case came to prominence in this town.

Q. Did you talk to Mr. Legatos? A. Yes.

Q. And Mr. Brannely? A. Yes.

Q. Is that what caused you to change your story before the Court today?

Mr. Brannely: Just a moment. There is no indication this witness changed her story, and I ask your Honor to instruct the jury to disregard the purport of that question.

Mr. Seawell: I will withdraw the question and proceed with another question.

Q. Didn't you tell me, in the presence of Mr. Sanderson yesterday in my office, and in the presence of my stenographer that in your opinion Mr. Tony Legatos did not operate his business in a legal manner——

Mr. Brannely: Just a moment.

Mr. Seawell: Just a moment. Let me finish my question.

Mr. Brannely: Your Honor——

The Court: Just a moment. There is the place (indicating) not all around the court room.

Mr. Brannely: Yes, and I desire, your Honor, on behalf of my client, Mr. Legatos—— [135]

The Court: There is no reason to get exercised——

Mr. Brannely: ——to object to that question on the ground it is improper redirect examination and it is an attempt to cross examine his own witness.

Mr. Seawell: That is correct, and I am laying the foundation for having been taken by surprise.

(Testimony of Laverne Lewis.)

The Court: Overruled. Go ahead.

The Witness: Mr. Seawell, will you ask me the question again?

Mr. Seawell: Q. Didn't you tell me yesterday in my office in the presence of Miss Souza, my stenographer, and Mr. Sanderson, the agent in this case, and myself that Mr. Tony Legatos did not operate his bar in a lawful manner?

A. I didn't say that, I said in a very careless manner.

Q. And didn't you say he knew about the rum being put into these bottles, in your opinion?

A. Yes, I might have.

Mr. Brannely: Well, now, just a moment. Your Honor, I am going to make an objection to protect my client here. He says if in her opinion he knew the rum was put into those bottles. Your Honor, we certainly object to that as being an improper question.

The Court: There is no objection before the Court.

Mr. Brannely: Well, we are making the objection.

Mr. Seawell: Just a minute. May it please the Court, [136] Mr. Brannely asked this woman if in her opinion he operated these bars in a lawful manner. Now I am on redirect asking her if she didn't tell me yesterday that in her opinion Mr. Tony Legatos always knew about this rum going into bottles, because he told these men to force this rum and to get rid of it.

(Testimony of Laverne Lewis.)

Q. Isn't that what you told me?

Mr. Brannely: Just a moment. Your Honor, I object——

The Witness: I said he said to push the rum and brandy sales.

Mr. Seawell: Q. And in your opinion he knew it was being mixed?

Mr. Brannely: Just a moment before you answer the question. We stand on the objection there; it is not a question of her opinion. That is immaterial, your Honor. She is testifying to facts, not what her opinion might be.

Mr. Seawell: That is right.

Mr. Brannely: And we object to it upon the ground her opinion is not testimony in this case and it is incompetent, irrelevant and immaterial. We stand upon that objection, your Honor.

Mr. Seawell: I would never have asked the question if you had not asked her if in her opinion——

Mr. Brannely: I didn't ask for any opinion.

Mr. Seawell: Let me finish. If in her opinion he ran [137] the business in a lawful manner.

Mr. Brannely: I didn't ask for an opinion. I asked if she knew as a fact.

The Court: Proceed.

Mr. Seawell: That is all.

Mr. Brannely: That is all. Thank you, Mrs. Lewis.

Oh, may I ask you just one more question, please, Mrs. Lewis? Will you take the stand again?

(Testimony of Laverne Lewis.)

Recross Examination

Mr. Brannely: Q. You stated that you talked to me, didn't you, in response to one of Mr. Seawell's question? A. That is right.

Q. Well, it is a fact I asked you what you told Mr. Seawell, isn't that correct?

A. That is right.

Q. And you told me you would rather not discuss it with me, didn't you?

A. I told you I didn't like your attitude.

Q. Yes. And you didn't tell me anything about it, wasn't that correct, Mrs. Lewis?

A. That is right.

Mr. Brannely: That is all.

Mr. Seawell: That is all.

Mr. Kennedy: Just a moment. [138]

Recross Examination

By Mr. Kennedy:

Q. What was the date that you had the conversation with Chris Maritsas?

A. About two or three months ago, Mr. Kennedy.

Q. Now will you give us that whole conversation again, please?

A. Yes, I will. I asked him—he brought up the subject about being arrested in this case, and I asked him, I says, "Chris, why in the world did you ever mix that brandy and rum and put that in the whiskey?"

(Testimony of Laverne Lewis.)

He said, "Well, I didn't think I was doing any harm to anybody or hurting anybody, because it cost more than the whiskey."

Q. By the way——

Mr. Kennedy: That is all.

Mr. Seawell: That is all. Thank you.

Mr. Ben H. Butler.

BEN H. BUTLER,

called for the Government, sworn.

Direct Examination

Mr. Seawell: Q. Mr. Butler, what is your occupation?

A. I am an Investigator with the Alcohol Tax Unit.

Q. How long have you been so employed?

A. I am in my twelfth year.

Q. And you were so employed continuously for 12 years up to [139] date, is that correct?

A. Yes, sir.

Q. And now, Mr. Butler, were you present in the United States Commissioner's hearing in this building on this floor at the time Mr. Chris Maritsas was arraigned, and Mr. Tony Legatos?

A. Yes. You are referring to the hearing on October 22nd?

Q. 22nd, 1945. A. Yes, I was.

Q. And who was present, if you recall?

(Testimony of Ben H. Butler.)

A. Both defendants here, Chris Andrew Maritsas and Tony Legatos, with an attorney, the U. S. Commissioner, Mr. Klein, myself and you.

Q. And do you recall what Mr. Maritsas stated at that time in regard to refilling the bottles—the first 14 bottles in this case, for your information, are the Schenley bottles which the chemist has testified contained rum—and in regard to the remaining bottles?

A. Yes, sir. He testified that he filled—I don't recall whether he said 14 bottles, but he filled some bottles with half rum, and that the remaining bottles he didn't fill, but had been filled by the bartenders at the close of business by pouring remnants from old bottles in—Small amounts of remaining whiskey into other bottles.

Q. And do you recall how long he stated he had worked for Tony Legatos?

A. As I recall, he said six or seven years.

Mr. Seawell: That is all. The Government rests, may it please the Court. [140]

Mr. Brannely: Your Honor, I think there is only five minutes. May we recess until tomorrow morning, your Honor?

The Court: Yes. The Court will recess until tomorrow morning at 10:00 o'clock.

Remember the admonition heretofore given you by the Court, ladies and gentlemen.

(Recess.) [141]

Thursday, April 11, 1946, 10:00 o'clock a.m.

The Clerk: United States vs. Tony Legatos and
Chris Maritsas.

Mr. Seawell: Ready.

Mr. Brannely: Ready.

Mr. Kennedy: Ready.

The Court: The Clerk will call the roll of jurors.
(Roll called.)

The Clerk: They are all present, sir.

The Court: You may proceed.

Mr. Brannely: The case is with the defendant?

Mr. Seawell: It is stipulated that Mr. Legatos
owns the bar at 621 K Street, is that correct, the sole
owner?

Mr. Brannely: Yes, we stipulate that he is the
licensee of those premises.

Mr. Kennedy: At this time, on behalf of Chris
Maritsas, I make a motion in the alternative on the
first count, a motion for acquittal.

The Court: Denied.

Mr. Brannely: Your Honor, on behalf of the de-
fendant Legatos I make the same motion.

The Court: Denied.

Mr. Brannely: Mr. Coghill. [142]

EDWARD THOMAS COGHILL,
called for the defendant, Legatos; sworn.

Direct Examination

Mr. Brannely: Q. Your name is Edward Coghill? A. Yes, sir.

Q. Where do you reside, Mr. Coghill?

A. I reside at 861-41st Street.

Q. And you are a resident of the City of Sacramento? A. Yes, sir.

Q. What is your occupation?

A. Owner, printer.

Q. Now, Mr. Coghill, do you know Mr. Tony Legatos? A. Yes.

Q. How long have you know him?

A. Since 1939.

Q. Do you know other people who know him?

A. I do.

Q. Do you know what his general reputation in this community is as a law abiding citizen?

Mr. Seawell: Just a moment. You haven't laid a foundation.

Mr. Brannely: In what respect?

Mr. Seawell: You haven't asked him if he knew other people in the community who knew him.

Mr. Brannely: I have asked that question. Asked him if he knew other people who knew Tony Legatos.

Mr. Seawell: That is not the proper way to approach the subject. He must ask him if he knows other people in this [143] community.

The Court: That is correct.

(Testimony of Edward Thomas Coghill.)

Mr. Brannely: Q. Mr. Coghill, do you know other people in this community who know Mr. Legatos? A. I do.

Q. You do. Do you know what his general reputation in this community is for a law abiding person? A. I do.

Q. Is it good or bad? A. Good.

Mr. Brannely: Cross examine.

Cross Examination

Mr. Seawell: Q. Did you know that Mr. Legatos is charged with having run a bar in which he was selling rum in the place of whiskey? Did you know that? A. I know he was charged with it.

Q. Yes. And do you know that his employee has admitted that he had filled a number of bottles, some 14 bottles, with rum, whiskey bottles with rum?

A. I do not.

Q. If you knew those facts, would that change your opinion in any regard as to the reputation of Mr. Legatos? A. It would not.

Q. It would not affect you one way or the other whether they refilled bottles in the bar or not?

Mr. Brannely: That is objected to as incompetent, irrelevant and immaterial.

Mr. Seawell: I want to ask the witness——

Mr. Brannely: The question assumes something not in [144] evidence.

Mr. Seawell: Why, Mr. Chris Maritsas has stated in a statement that “I personally refilled 14 bottles of Schenley Reserve blended whiskey with one-half Ron Manana rum, imported rum, 86

(Testimony of Edward Thomas Coghill.)

proof. I have been doing this refilling for about ten days myself. The remaining bottles have been refilled by the bartenders pouring from one bottle to the other. I was fully aware this was against the laws of the Internal Revenue Department."

Mr. Brannely: Your Honor——

Mr. Seawell: Let me ask the question.

Mr. Brannely: May I make an objection?

The Court: Gentlemen.

Mr. Seawell: May I present the question, then he can make his objection?

The Court: Yes.

Mr. Seawell: Taking that fact into consideration, would that in any way change your opinion?

A. It would not.

Mr. Seawell: That is all.

Mr. Brannely: That is all. Thank you, Mr. Coghill. Mr. Holmes. [145]

WALTON E. HOLMES,

called for the defendant Legatos; sworn.

Direct Examination

Mr. Brannely: Q. Your name is Walton E. Holmes? A. That is correct.

Q. What is your occupation, Mr. Holmes?

A. Vice-President, Secretary of the Capital National Bank.

Q. And you reside in Sacramento?

(Testimony of Walton E. Holmes.)

A. I do.

Q. Do you know the defendant at the bar of this court, Mr. Tony Legatos? A. I do.

Q. How long have you known him?

A. Approximately 20 years.

Q. And do you know other people in this community who know him? A. Yes.

Q. Do you know what his general reputation in this community is as a law abiding person?

A. Yes, I do.

Q. Is it good or bad? A. Good.

Mr. Brannely: Cross examine.

Cross Examination

Mr. Seawell: Q. Do you know this man personally or socially or in a business way?

A. Well, all three ways.

Q. And did you know that his employee had admitted refilling other bottles with rum,—whiskey bottles with rum? A. I did not.

Q. And did you know that—you heard the statement I read this morning didn't you?

A. I did. [146]

Q. And if you knew those facts would that change your opinion in any regard as to his reputation?

A. It would have to be proven to me very strongly.

Q. Well, assuming it was proven, would that change your ideas in any way—

Mr. Brannely: Your Honor—

(Testimony of Walton E. Holmes.)

Mr. Seawell: No——

Mr. Brannely: Your Honor, permit me to state my objection. I don't want to appear argumentative to the Court, but what his employees do without his knowledge certainly cannot be imputed to Mr. Legatos here. The question is improper for that reason, and we base our objection on that ground.

The Court: Overruled.

Mr. Seawell: May it please the Court—you overruled the objection?

The Court: Yes.

Mr. Seawell: Q. You may answer.

A. I don't know how to answer that question. There would be a lot of factors that would enter into it. How I would form my opinion just in a flash, I would say instantly—it is hard to answer that question, Mr. Seawell.

Q. Well, assuming that one of his managers did state, as I have stated, that he refilled bottles over a period of at least ten days, and that he knew that the other bartenders were pouring whiskey from, say, an Old Taylor bottle, or, rather, in this case, an Old Forrester bottle into a Schenley bottle, [147] or vice-versa, and charged whiskey prices or the price for the more expensive whiskey——

Mr. Kennedy: Objected to as assuming a fact not in evidence.

Mr. Seawell: Q. Assuming that fact, and assuming that Mr. Legatos had told his secretary that he had some 40 or 50 cases of rum and that he

(Testimony of Walton E. Holmes.)

told her that "I have got 40 or 50 cases here and I am going to move it," and he stated, "I am going to give each one of my managers so much and ask them to press their sales," and assuming also that he stated, "I am going to get rid of this rum and brandy," he stated, "I am overstock on it." Would all that enter into——

Mr. Kennedy: Just a moment.

A. Who made that statement?

Mr. Seawell: Mr. Legatos made that statement to Mrs. LaVerne Lewis, his secretary and book-keeper.

Mr. Brannely: Just a moment, Mr. Holmes. Now I object to that question on the ground it is a compound question, that it assumes something not in evidence, that it is incompetent, irrelevant and immaterial, and on the further ground, your Honor, it is improper cross examination.

The Court: Overruled.

Mr. Kennedy: Same objection on behalf of the defendant Maritsas.

The Court: Overruled. [148]

Mr. Kennedy: And on the further ground it is a misstatement of Mrs. Lewis' testimony.

Mr. Seawell: I am reading from the reporter's transcript, Page 33 at Lines 6 to 25 and Page 34 at Lines 1 to 7, Mr. Kennedy.

A. Well, I don't really know how to answer that question, because of what I know of Mr. Legatos I don't believe——

Mr. Seawell: Q. No——

(Testimony of Walton E. Holmes.)

Mr. Kennedy: Let the witness answer.

Mr. Seawell: Yes, answer either yes or no, and then you may explain your answer.

A. I don't really believe that Mr. Legatos would do that.

Mr. Seawell: I move to strike out the answer as not responsible.

Q. Answer yes or no, and then explain your answer.

A. The question is not clear. There are a lot of factors——

Q. I will withdraw the question and try to make it clear to you, Mr. Holmes. What I am asking you is this: That assuming Mr. Legatos owned a bar known as the Golden Tavern, and assuming he has a manager there who has said under oath that he refilled some 14 Schenley whiskey bottles with rum and that he knew the bartenders from time to time had poured the whiskey from an Old Forrester bottle into an Old Charter bottle, or from an Old Forrester bottle into a Schenley Black Label bottle, and assuming that he had told his secretary—[149] Mr. Legatos now is talking to his secretary—, “I have got 40 or 50 cases here and I am going to move it,” and he further stated—this is Legatos now— “I am going to give each one of my managers so much and ask them to press it in their sales”; and assuming Mr. Legatos further said, “I am going to get rid of this rum and brandy, I am overstocked on it”; would that in any way change your opinion as to his reputation?

(Testimony of Walton E. Holmes.)

A. Well, I would say this——

Q. No, will you please answer yes or no and then explain your answer.

Mr. Brannely: For the purpose of the record, your Honor, we make the same objection, on the grounds it is incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. Seawell: It either would or would not change your opinion, Mr. Holmes. Either yes or no.

A. No, on any individual——

Mr. Seawell: I ask that be stricken. I want it yes or no——

Mr. Brannely: Your Honor, that is a question that can't be answered yes or no. A lot of words is being put in the witness' mouth here. It is the same type of question as "Do you beat your wife any longer"? It is a compound question and it cannot be answered in that manner, and that is the basis of our objection. If your Honor would compel Mr. Seawell to reframe it, we would have no objection at all. [150] It assumes a lot of things not in evidence.

Mr. Seawell: What?

Mr. Brannely: And it is a question that is not capable of being answered yes or no.

Mr. Seawell: What does it assume that is not in evidence?

Mr. Brannely: It assumes he had knowledge of the fact that this was going on; it assumes that he had knowledge of the fact that the bartenders

(Testimony of Walton E. Holmes.)

were doing things like that, your Honor. It assumes a lot of things are in evidence that are not in evidence.

Mr. Seawell: I don't think you listened to the question. I will repeat the question.

The Witness: May I ask your Honor now in respect to that? It is just like this: For instance, if Mr. Seawell or someone said to me that—let's assume that Mr. Seawell or somebody else——

Mr. Seawell: Just a moment. I am going to object to Mr. Holmes——

Mr. Brannely: Just a moment. The witness is addressing his Honor.

Mr. Seawell: I understand that, but I want the court to indulge me for a moment if he is going to make a statement to the jury. All I am asking him is a very simple question, whether or not the facts I have related, assuming them to be facts, would it change his opinion. [151]

The Witness: I would like to ask his Honor a question.

The Court: No, you answer the question of Mr. Seawell.

The Witness: All right, I will ask you, Mr. Seawell——

Mr. Seawell: No, I object to that. I want the witness to answer yes or no.

The Witness: I don't know how I can answer yes or no.

Mr. Seawell: You can't answer it yes or not?

A. No.

Mr. Seawell: That is all.

(Testimony of Walton E. Holmes.)

Redirect Examination

Mr. Brannely: Q. But, Mr. Holmes, if Mr. Legatos had in his employ a person who had placed rum in Schenley whiskey bottles, mixed it with the Schenley whiskey, and Mr. Legatos had no knowledge of that, would that affect your statement---

Mr. Seawell: Just a moment.

Mr. Brannely: May I finish my question?

Mr. Seawell: Well, it is so obviously an improper question---

Mr. Brannely: Please let me finish my question.

Q. Would that affect your testimony in regard to the good general reputation that Mr. Legatos enjoys in this community?

Mr. Seawell: Just a moment. I object to that as incompetent, irrelevant and immaterial, outside the direct examination, has no bearing on the character of the defendant in this case.

Mr. Brannely: It is something you brought out.

Mr. Seawell: Just a moment—oh, no it isn't.

The Court: Overruled.

Mr. Brannely: You may answer, Mr. Holmes.

A. Well, I would answer that question the same as I answered Mr. Seawell. I couldn't answer that question.

Mr. Brannely: I see. Thank you very much, Mr. Holmes. Mr. Zoller.

GEORGE E. ZOLLER,

called for the defendant Legatos; sworn.

Direct Examination

Mr. Brannely: Q. Your name is George E. Zoller? A. Yes.

Q. What is your occupation, Mr. Zoller?

A. Banking.

Q. In the City of Sacramento? A. Yes.

Q. Do you know the defendant at the bar in this Court, Mr. Tony Legatos? A. Yes.

Q. How long have you known him?

A. Fifteen or twenty years.

Q. And do you know other people in this community who know him? A. Yes.

Q. Do you know what his general reputation in this community is as a law abiding person?

A. As far as I know it is good.

Mr. Brannely: Cross examine. [153]

Cross Examination

Mr. Seawell: Q. Did you ever discuss his reputation with other persons, Mr. Zoller?

A. Not particularly.

Q. Is he a customer of the bank? A. Yes.

Q. You have heard the question—I don't know whether it was clear or not to you—I asked Mr. Holmes, assuming this to be the fact, that Mr. Legatos owned the bar at 621 K Street known as the Golden Tavern, and assuming that his bartender or manager stated that he had refilled some 14 bottles, which are in evidence, and the remainder of

(Testimony of George E. Zoller.)

the bottles had been poured from one to another, the liquor from one to another, and refilled those bottles with rum, and assuming his secretary testified that he stated to her, "I have got 40 or 50 cases here and I am going to move them"—referring to rum—and he further stated, "I am going to give each one of my managers so much and ask them to press it in their sales," and further told her, "I am going to get rid of this rum and brandy; I am overstocked with it": Would that in any way change your idea——

Mr. Brannely: Just a moment, your Honor,——

Mr. Seawell: ——of the reputation of Tony Legatos in this community? A. No.

Mr. Brannely: Just a moment.

Mr. Seawell: It has been answered. [154]

Mr. Brannely: We ask that the answer go out for the purpose of making an objection on the same grounds heretofore stated.

Mr. Seawell: I don't understand it. Mr. Zoller has testified the man is of good reputation, and now you are objecting to it.

The Court: Denied. Proceed.

Mr. Seawell: That is all. I haven't anything further.

Mr. Brannely: That is all. Thank you, Mr. Zoller.

Mr. Kennedy: Call Mr. Maritsas.

CHRIS ANDREW MARITSAS,

one of the defendants, called on his own behalf;
sworn.

Direct Examination

Mr. Kennedy: Q. Mr. Maritsas, you are one of the defendants in this action? A. Yes.

Q. And you are how old? A. Sixty-three.

Q. How long have you lived in Sacramento?

A. Twenty-five years.

Q. How long have you worked for Tony Legatos?

A. Seven years—six years—eight years, something like that.

Q. What is your duty? [155]

A. Oh, just relieving bartenders around there and work there around and about.

Q. A little louder, please. And where do you work? A. Huh?

Q. Where do you work? A. 621 K.

Q. And what is the name of the place?

A. Golden Tavern.

Q. Yes. Now, Mr. Maritsas, you recall the incident of July the 17th and 18th when Mr. Sander-son and Mr. Tschierschky, the Government agents, came and visited the premises known as the Golden Tavern where you were employed? A. Yes.

Q. And at that time they questioned you?

A. Yes.

Q. And what did you tell them with reference to the 14 bottles of Schenleys?

A. I told them I filled 14 bottles of Schenley

(Testimony of Chris Andrew Maritsas.)

with the rum, and, of course, to stretch out with the whiskey, because I was short of Schenley's at the time, and it was good stuff to put in there, that is all.

Q. And you admitted that later to Mr. Butler?

A. Yes.

Q. At the preliminary hearing? You remember Mr. Butler testified? [156]

A. Yes, I know him.

Q. And likewise to Mrs. Lewis, who testified here yesterday? A. Yes, sir.

Q. All right. Now, let me ask you this question: Insofar as that rum was concerned, what kind of bottles did it come out of?

A. That Manana rum.

Q. What was the character of the bottles with reference to strip stamps? A. They——

Mr. Seawell: Just a moment; I am going to object. It is incompetent, irrelevant and immaterial. If he refilled the bottles as he stated—it is clearly against the law if he put rum in whiskey bottles, which he says he did.

Mr. Kennedy: Your Honor, I think the jury is entitled to know exactly what he did——

Mr. Seawell: He has testified to what he did, that he put rum in bottles and sold it as whiskey.

Mr. Kennedy: Yes, and now I asked him what was the character of the rum as to revenue stamps.

Mr. Seawell: I misunderstood you.

Mr. Kennedy: Will you proceed?

A. I took it from the bottles that were full.

(Testimony of Chris Andrew Maritsas.)

Q. What kind of stamps were on them?

A. Government stamps. [157]

Q. Government stamps. Now let me ask you this, Mr. Maritsas; did you at any time tamper with these stamps that are on these bottles?

A. No, sir.

Q. Did you change them in any way at all?

A. No.

Q. Did you do anything with them at all other than what you do when you break the seal and destroy the stamp? A. No, sir.

Q. You destroyed the stamp as in every other bottle? A. Yes, sir.

Mr. Kennedy: That is all.

Mr. Seawell: I take it——

Mr. Brannely: May I cross-examine the witness?

Mr. Seawell: You cross-examine the witness?

Mr. Brannely: Yes. May I examine him? He is a witness in the case.

Mr. Seawell: You mean call him as your witness?

Mr. Brannely: I don't think we have to.

Mr. Seawell: I think you do. I have never heard of the defendant cross-examining his witness.

Mr. Brannely: We will ask his honor for a ruling on it; I want to cross-examine the witness.

The Court: Overruled.

Mr. Seawell: Go ahead. [158]

(Testimony of Chris Andrew Maritsas.)

Cross Examination

By Mr. Brannely:

Mr. Brannely: Q. Mr. Maritsas, I believe you stated that you have been employed by Mr. Legatos for a period of approximately 7 years?

A. 7 years.

Q. Is that your testimony? A. Yes.

Q. Now, has that 7 years of employment taken place in the Golden Tavern at 621 K Street?

A. Yes.

Q. The entire period of time has been there?

A. Yes.

Q. Now, how frequently or how often did you see Mr. Tony Legatos at the Golden Tavern?

A. Sometimes——

Mr. Seawell: Just a moment. I object to it as outside the direct examination.

The Court: Sustained.

Mr. Brannely: Your Honor, as I understand it, if I exceed the scope of the direct examination I make the witness my own.

Mr. Seawell: That is right.

Mr. Brannely: And I am willing to do that if I exceed the scope of the direct examination.

Mr. Seawell: Well, call him as your own witness if you want to.

Mr. Brannely: May I ask the question, your Honor?

Mr. Seawell: No, I object to it as outside the scope [159] of the direct examination.

The Court: Sustained.

(Testimony of Chris Andrew Maritsas.)

Mr. Brannely: Your Honor, it seems to me that it would be entirely within the scope of the direct testimony. As I recall Mr. Maritsas' testimony, he says that he has been employed in the Golden Tavern for a period of about 7 years.

Mr. Seawell: That is right.

Mr. Brannely: Now, I am just going into the question regarding employment.

Mr. Seawell: You are going into another subject matter altogether.

The Court: The Court has ruled.

Mr. Brannely: All right, I will make Mr. Maritsas my own witness, your Honor.

Mr. Seawell: You are calling him as your witness?

Mr. Brannely: Yes, calling him as my witness.

Q. How frequently did you see Mr. Legatos at the Golden Tavern?

A. Sometimes——

Mr. Seawell: Just a moment. If you are going to make him your own witness, may I cross-examine him, and then you call him as your witness?

Mr. Brannely: Do you want to conduct it that way?

Mr. Seawell: Yes.

Mr. Brannely: I have no objection, Mr. Seawell, go right ahead. [160]

Cross Examination

By Mr. Seawell:

Q. You stated you worked 7 or 8 years for Mr. Legatos? A. Yes.

(Testimony of Chris Andrew Maritsas.)

Q. You have no interest in that business, have you? A. No.

Q. You don't profit in the sale of liquors and rum, do you? A. What?

Q. You don't profit in the sale of liquors and rum? A. No.

Q. It doesn't make any difference to you what is sold, then? A. No.

Mr. Seawell: You are the manager; you simply work for Tony Legatos. That is all.

Direct Examination

By Mr. Brannely:

Q. Mr. Maritsas, I believe I asked you how frequently you——

Mr. Seawell: You are now calling him as your witness?

Mr. Brannely: Yes, as my witness.

Q. How frequently you saw Tony Legatos at the Golden Tavern? A. Sometimes——

Mr. Seawell: Just a moment. I object to that as incompetent, irrelevant and immaterial how often he sees Tony Legatos.

Mr. Brannely: Your Honor, that goes to the essential element of the indictment, the wilfullness and knowledge of [161] Mr. Legatos, and it goes directly to the heart of the case, and I think it is absolutely a proper question.

Mr. Seawell: I don't see how it has any bearing on the guilt or innocence of the defendant.

The Court: Overruled.

(Testimony of Chris Andrew Maritsas.)

Mr. Brannely: Q. Mr. Maritsas, you may answer the question.

A. What was it?

Q. The question I asked was how often did you see Tony Legatos at the Golden Tavern?

A. Sometimes I see him two weeks, and sometimes one month.

Q. Does he work at the place? A. No.

Q. He is the owner? A. He is the owner.

Q. Now, during the entire period of your employment, Mr. Maritsas, by Mr. Tony Legatos, has he ever given you any instructions to put rum in Schenley's whiskey or in any other bottle?

A. Never give me any instructions of any kind, nothing.

Q. So far as you know, what you did down there in putting the rum——

Mr. Seawell: Now, just a moment——

Mr. Brannely: Just a moment, please, until I finish my question.

Q. So far as you know, Mr. Maritsas, about what you did down there, did Mr. Legatos have any knowledge? A. No.

Mr. Seawell: Just a moment. I ask it be stricken until [162] I make my objection.

The Court: Yes.

Mr. Seawell: At this time, may it please the Court, I object to the question as leading and suggestive.

Mr. Brannely: Q. Did you ever, prior to the 19th day of July, when you signed that statement,

(Testimony of Chris Andrew Maritsas.)

did you ever have any discussion with Tony Legatos regarding the placing of rum with whiskey?

A. No.

Q. Never did? A. No.

Q. So far as you know, did Tony Legatos have any knowledge of what you did down there?

Mr. Seawell: Just a moment. Have you finished the question?

Mr. Brannely: Yes, I have finished the question.

Mr. Seawell: I object on the ground it is leading and suggestive and calls for hearsay testimony on the part of the witness.

Mr. Brannely: That is all.

Cross Examination

By Mr. Seawell:

Q. As a matter of fact, Tony Legatos checked very closely on the liquor, did he not?

A. Well, I don't know anything about that at all.

Q. And when you needed rum, he sent you rum, is that right? A. Not me. [163]

Q. Well, he sent it to the bar?

A. Well, I don't know.

Q. And he came in there very often, sometimes twice a week?

A. Sometimes two weeks, sometimes a month, sometimes don't come there for a month and a half.

Q. And sometimes twice a week?

A. Well, I didn't see him there.

(Testimony of Chris Andrew Maritsas.)

Q. You aren't there all the time? A. No.

Q. So you don't know how often he comes there, do you? So far as you know he may come there every day? A. Well, I don't see him.

Q. But you aren't there all day, are you?

A. No.

Q. The bar is open from 10:00 in the morning till 12:00 at night? A. Yes.

Q. What shift did you work on July 18, 1945?

A. 4:00 to 12:00.

Q. So you don't know whether Mr. Legatos was there in the morning when the bar opened up to 4:00 o'clock, do you? A. No.

Mr. Seawell: That is all.

Mr. Brannely: That is all. Mr. Legatos. [164]

TONY LEGATOS,

one of the defendants, called in his own behalf, sworn.

Direct Examination

By Mr. Brannely:

Q. Will you state your name, please?

A. Tony Legatos.

Q. Where do you live, Mr. Legatos?

A. 1040 Forty-fourth Street.

Q. In the city of Sacramento?

A. Yes, sir.

Q. How long have you lived in Sacramento?

A. Oh, since '18, 1918.

(Testimony of Tony Legatos.)

Q. Since 1918? A. Yes.

Q. What is your occupation?

A. Restaurant man.

Q. And do you operate bars in connection with your restaurants?

A. In connection with the restaurants.

Q. Yes. Approximately how many restaurants and bars do you operate, Mr. Legatos?

A. I have around 16 or 17 restaurants and bars together.

Q. 16 and 17 restaurants and bars?

A. Yes, sir.

Q. And they are located in the City of Sacramento?

A. Some in Sacramento, some in Vallejo, some in Frisco.

Q. In northern California?

A. Northern California, yes.

Q. I see. Now, Mr. Legatos, you have heard for the past couple of days testimony regarding Chris Maritsas putting rum into whiskey bottles at the Golden Tavern? A. Yes. [165]

Q. Did you know that was being done there?

A. No.

Q. When is the first time that you had any knowledge of that at all? That that has been done?

A. The day they came around and they notified me to go to the Golden Tavern.

Q. And was that about noon on the 19th day of July? A. About that time, yes.

Q. About that time, yes. And did you tell the

(Testimony of Tony Legatos.)

agents there, the alcoholic control agents there that you knew nothing about it.

A. That is right. I told them I knew nothing about it.

Q. That you knew nothing about it?

A. Yes.

Q. And that you had given your employees instructions to obey the law?

A. That is right.

Mr. Seawell: Are you testifying, Mr. Brannely, or the witness? I think the questions are leading and suggestive, putting words into the witness' mouth.

Mr. Brannely: Q. Now, Mr. Legatos, how do you operate your business?

Mr. Seawell: Let him state how he operates the businesses.

Mr. Brannely: Q. Yes. How do you operate these various businesses?

A. I have a manager. [166]

Q. You have a manager? A. Yes.

Q. And you, of course, have to depend——

Mr. Seawell: Now, just a moment. I am going to object to Mr. Brannely putting suggestive ideas in the witness' mouth. You ask him questions.

The Court: Yes, ask questions.

Mr. Brannely: I will reframe my question.

Q. How do you conduct these various business establishments?

A. The business is run with the manager every place.

(Testimony of Tony Legatos.)

Q. The business is run with the manager in every place? A. Yes, every place.

Q. Now, a former employee of yours, Mrs. Lewis, took the witness stand yesterday and stated that she had a conversation with you around the first part of February, 1945. Did you have a conversation with her? A. That is right.

Q. And I believe she further testified that you stated to her that you had 40 or 50 cases of rum at 701 J Street in premises known as the Log Cabin? A. That is right.

Q. You told her that?

A. I told her I had it.

Q. And you told her you wanted to send it out to the other places to sell it?

A. I told her—we talk over, and I said we send to different establishments the rum, but whether it is around 50 cases——

Mr. Seawell: Q. You told her this?

A. What to send—— [167]

Mr. Kennedy: Let the witness answer. I can't hear the witness' answer.

Mr. Seawell: I can't hear it either.

Mr. Kennedy: Mr. Seawell is interrupting.

Mr. Seawell: I want to hear the answer. I can't hear it. May the answer be read?

Mr. Kennedy: Let us hear the answer.

The Court: Yes.

The Witness: You say I talk with Mrs. Lewis to send the rum to different establishments, is that it?

(Testimony of Tony Legatos.)

Mr. Brannely: Q. Yes.

A. Sure we talk, yes.

Q. When you were telling her——

Mr. Seawell: Just ask what the conversation was.

Mr. Brannely: I have to call the man's attention to a part of the conversation——

Mr. Seawell: No, let's have all the conversation.

Mr. Brannely: Did you, at the time you had this conversation with her in which you stated you were going to send the rum to the different establishments, did you have any intention in your mind——

Mr. Seawell: Just a moment——

Mr. Brannely: Just a moment until I finish my question.

Q. Did you have any intention in your mind, Mr. Legatos, that that rum should be sent to your various establishments and mixed with whiskey?

A. No, sir. [168]

Q. And you didn't convey that impression, did you? A. No.

Mr. Seawell: I object to what impression he conveyed and ask the answer be stricken.

The Court: It may be stricken.

Mr. Brannely: Q. Now, Mr. Legatos——

Mr. Seawell: May he be instructed to wait until I have a chance to object, may it please the court? He is answering before I can put in objections.

Mr. Brannely: Q. Mr. Legatos, among your

(Testimony of Tony Legatos.)

establishments is the New Tony's Cafe, is that right?

A. That is right.

Q. That is 422 L Street?

A. That is right.

Mr. Brannely: Cross examine.

Cross Examination

Mr. Seawell: Q. And you are familiar with all the laws and rules in relation to the conduct of bars, aren't you?

A. Yes, sir.

Mr. Kennedy: I object as calling——

Mr. Seawell: Oh, no——

Mr. Kennedy: Pardon me——

Mr. Seawell: He said he is, and that's the end of it.

Q. Now, Mr. Legatos, you spend most of your time in Sacramento, don't you?

A. Sometimes, not all the time.

Q. No, not all the time, but most of your time?

A. Lots of time I spend in Vallejo.

Q. But you spend most of your time in Sacramento? A. I reside here.

Q. That is right, and you have your office in the Oschner Building? A. That is right.

Q. And during 1945, up until August, 1945, you spent most of your time in Sacramento?

A. That is right.

Q. And you go to these bars that you own, do you not, is that right?

A. I go in, but very seldom.

(Testimony of Tony Legatos.)

Q. And you keep books on how much liquor each bar disposes of? Do you not?

A. That is right.

Q. And you hire an accountant to go over these records with you? A. That is right.

Q. And you went over them with your book-keeper, is that right? A. That is right.

Q. So you know how much each bar is making and how much they are selling every day, don't you? A. I can't say every day.

Q. But for practical purposes you do?

A. That is right.

Mr. Seawell: That is all.

Mr. Brannely: That is all. Thank you, Mr. Legatos.

Your Honor, I have some other witnesses coming at 11:00 o'clock and then we are going to close. It will be very, very short. May we recess until 11 o'clock? [170]

The Court: Ladies and gentlemen of the jury, we will recess for—how long?

Mr. Brannely: Until 11:00.

The Court: 11:00 o'clock. Remember the admonition heretofore given you by the Court.

(Recess.)

The Court: Call the roll of jurors.

(Roll called.)

The Clerk: They are all present, sir.

The Court: You may proceed, gentlemen.

Mr. Brannely: Mr. Elmer.

FRANK RAYMOND ELMER,

called for the defendant Legatos, sworn.

Direct Examination

By Mr. Brannely:

Q. Will you state your name, please?

A. Frank Raymond Elmer.

Q. What is your occupation?

A. Owner of the Elmer Paper Company.

Q. And do you have any other occupation, Mr. Elmer?

A. No, sir—well, I might correct that. I am supervisor of Sacramento County, if that is an occupation. I don't know.

Q. Yes. And you reside in the City of Sacramento? A. Yes, sir.

Q. Do you know the defendant at the bar of this court, Mr. [171] Tony Legatos?

A. I do.

Q. How long have you known him?

A. Between 18 and 20 years.

Q. And do you know other people in this community who know him? A. Yes, I do.

Q. Do you know what his general reputation in this community is as a law-abiding person?

A. Well, it has always been of the highest that I know of.

Q. It is good or bad? A. Good.

Mr. Brannely: Cross examine.

(Testimony of Frank Raymond Elmer.)

Cross Examination

Mr. Seawell: Q. And if you knew that Mr. Legatos operated a bar at 621 K Street known as the Golden Tavern——

A. Yes.

Q. ——and if you knew also that he had a manager who admitted filling a number of bottles, to-wit, 14 Schenley bottles of whiskey with rum over a period of time, and if you knew that Mr. Legatos was fully aware of all the internal revenue laws of the United States, and if you knew that his secretary testified that he said, “I have got 40 or 50 cases here”—referring to rum—“and I am going to move it,” and if you knew he also told his secretary that, “I am going to give each one of my managers so much and ask them to press it in their sales”—referring to this rum—and if you knew he further stated, “I am going to get rid of this rum and brandy, I am overstocked on it”; then, as I say, knowing those facts, [172] and knowing they actually did fill some 14 bottles with rum in one of these bars, would that in any way change your idea——

Mr. Brannely: Objected to——

Mr. Seawell: Just a moment. Would that in any way change your idea of him as a law-abiding citizen?

Mr. Brannely: Just a moment. I object to that as incompetent, irrelevant and immaterial, your Honor, assumes something not in evidence, and it is improper cross examination.

(Testimony of Frank Raymond Elmer.)

Mr. Seawell: I don't know what it assumes not in evidence.

The Court: Overruled.

Mr. Seawell: Q. Would that in any way change your testimony?

A. It would, if it was proved that Mr. Legatos had done that sort——

Q. You understood the question, is that right?

A. Yes, sir.

Q. Would that change your testimony in regard to his reputation?

A. If it was proven to me that he did that——

Mr. Seawell: Well, there is testimony to that effect. Thank you.

Redirect Examination

Mr. Brannely: Q. In connection with your last answer, if it was proven that Mr. Legatos had knowledge and assented to that, is that not what you mean? A. Yes. [173]

Recross Examination

Mr. Seawell: Q. Then I will reframe the question I asked you—I don't know whether you understood it—if you knew that Mr. Legatos told his secretary that, “I am going to get rid of this rum and brandy, I am overstocked with it,” and if he stated, “I have directed my managers to press their sales in regard to this rum,” and then if you knew that they actually did fill whiskey bottles with rum, half

(Testimony of Frank Raymond Elmer.)

rum and half whiskey, would that in any way change your idea of the reputation of Mr. Legatos?

Mr. Brannely: That is objected to on the same grounds I have stated, your Honor.

The Court: Overruled.

Mr. Seawell: Q. Either yes or no, and then you may explain your answer.

A. I don't think I can answer it yes or no. I don't believe, Mr. Seawell——

Mr. Seawell: Q. I want it either yes or no, and if you can't answer it, say so. A. Yes, sir.

Q. Mr. Seawell: It would. Thank you.

Redirect Examination

By Mr. Brannely:

Q. Mr. Zoller, if an employee had been doing this, and if it were shown to you that Mr. Legatos had no knowledge that the employee had placed rum in whiskey bottles, would that change your testimony regarding his good [174] general reputation as being a law-abiding citizen?

Mr. Seawell: Just a minute. That is assuming he didn't have knowledge of it. The evidence is to the contrary.

Mr. Brannely: I submit the entire testimony proves that he had no knowledge——

Mr. Seawell: There is no evidence to that effect.

Mr. Brannely: Mr. Legatos testified, for one, and no single person testified that he did have knowledge of it.

Mr. Seawell: Well, you haven't been reading the evidence.

Mr. Brannely: You may answer, Mr. Zoller.

A. No.

Mr. Brannely: That is all. The defense rests, your Honor.

The Clerk: Mr. Kennedy, you rest?

Mr. Kennedy: We rest.

The Clerk: Any rebuttal?

Mr. Seawell: The government rests.

The Clerk: Argument, sir?

Mr. Kennedy: Your Honor, at this time we renew our motion for acquittal on the first and second counts of the indictment.

The Court: Denied.

Mr. Brannely: Your Honor, on behalf of the defendant, Mr. Legatos, I join in that motion and make it in his behalf.

The Court: Denied. [175]

Mr. Seawell: Counsel, may it please the Court——

Mr. Kennedy: Pardon me just a moment. We are entitled, I believe, under the new rules, to be informed of the instructions prior to argument.

The Court: They will be submitted to you.

Mr. Kennedy: Pardon me, your Honor?

The Court: They will be submitted to you.

Mr. Kennedy: No, prior to the argument, we are entitled to be advised of the instructions——

Mr. Seawell: What section?

Mr. Kennedy: It is a section of the new rules

—so we will be able to make our argument to the jury, your Honor.

The Court: Yes. Ladies and gentlemen of the jury, we will recess until 2:00 o'clock this afternoon. Remember the admonition heretofore given you.

(Thereupon an adjournment was taken until 2:00 o'clock P.M. this date.) [176]

Thursday, April 11, 1946

2:00 o'clock p.m.

The Court: Call the roll of jurors.
(Roll called.)

The Clerk: They are all present, sir.

The Court: You may proceed.

OPENING ARGUMENT ON BEHALF OF THE GOVERNMENT

Mr. Seawell: May it please the court, counsel and ladies and gentlemen of the Jury: As I stated in my opening remarks the Government would prove that on or about the 18th day of July, 1945, the agent, Mr. Sanderson, and the other agent went to a bar which is owned by Tony Legatos at 612 K Street, known as the Golden Tavern Bar; that they went there on the morning of that day. There was no question about their entry; they simply went in and asked to see the stock, and the bartender said, "Go ahead," or words to that effect.

They identified themselves, and they then ex-

amined and took some bottles, in number forty, and applied what is known as the Williams test.

I don't believe it is necessary to dwell on the contents of these bottles to any great extent. Mr. Maritsas this morning took the stand and he testified that he, himself, poured rum into 14 of the bottles. He also admitted in his statement, [231] which is in evidence, that he did put this rum into whiskey bottles and that he had been doing it for a period of ten days. There is no denial of that, at least, and he said the remaining bottles were refilled by the bartenders pouring from one to the other.

In other words, they would take any old bottle, they would take a Four Roses bottle and pour some Old Charter in or take a Seagram's bottle and pour that in, as they saw fit. There is no denial of those facts in this case. I see no reason to dwell on that at this time.

The Government next produced the chemist. He testified that in these bottles labeled as straight whiskies, such as Four Roses—and although it states that is a blend of straight whiskies,—it isn't a blend of distilled spirits, it is a blend of straight whiskies. In other words, all the whiskies in this bottle are supposed to be five years or more old. They took a number of old whiskies and blended them together.

The chemist testified that in his opinion all those bottles had been refilled, and, as a matter of fact, in all these straight whiskey bottles he found caramel.

I am sure the Court will instruct you that it is against the law to add anything with the exception

of water at the distilleries to straight whiskies, whether it be bottled in bond straight whisky or straight whiskey that is not bottled [232] in bond, but which is straight whiskey. It is positively against the law to do that, and when any foreign substance such as caramel or what not is found in a bottle it must have been added by someone, and as the defendant Chris Maritsas says, he himself poured from one bottle to the other, and where he got the caramel is something for the jury to decide.

At any rate, he did violate the law by re-using the bottles.

Now, as for Chris, I think that we can forget him for the purposes of this argument, at least so far as I am concerned, unless I hear some arguments by the defendant. He has taken the stand and said, "Yes, I violated the law." I guess he says, "Well, this is not a serious offense and maybe the jury will acquit me." I don't know exactly what his argument will be by Mr. Kennedy.

To me it is clear. He went before the United States Commissioner, and I put Mr. Butler on and Mr. Butler told you that he admitted to the facts the day he went there and he admitted to the employee, Mrs. Lewis, and he has admitted apparently to everybody that has talked to him. "Yes, I did it."

Now we come down to the next phase of the case, and that is Tony Legatos.

The defense apparently, as I see, is going to be raised—it is usually raised in this type of case, "Well, somebody has got to be the fall guy. Here is the Government, they have chemists who are going

to testify these bottles were refilled. [233] They have 31 bottles somebody refilled, somebody has to be the fall guy."

So they say, "Well, the proprietor, we don't want to make him the fall guy. Let's pick up some old donkey, let's pick out Chris. Maybe he doesn't know it is serious. Let's say he did it."

Don't forget, Chris wasn't there the first day they came in. It was the next day they came in and he and Legatos came in the next day and then is when he volunteered and said, "Yes, I did it."

What is he trying to do? It is obvious to me, and I am sure it is to you all, ladies and gentlemen of the jury. They put the heat on him. You notice that Tony was there when the agents came back the next day, to be sure he said, "I did it, and I did it alone."

So it is the old case; they had many cases in the old prohibition days; let the donkey, as they called the working man, the man that carried on the operation, let him take the blame.

But here we come to the reason. What reason would Chris have to do that? This is a reasonable world, and there must be a reason for something. This man is a reasonable man. Why would he do that?

Well, there might possibly be two or three reasons why a man would do that: He might want to get in good with the boss. [234] But this man has been there seven years. He is an old employee, a trusted employee, the manager where he is there, he had the day shift, from 4:00 in the afternoon 12:00 at night. Why would he have to get in good with

his boss? He has worked for this man for eight years. He has drawn a salary. What reason would he have to get in good with his boss?

There is no reason. They were getting along fine. So what other reasons would he have? He wasn't on a percentage deal. If he was on a percentage deal he would try to swell the profits and instead of making \$10 a day, he will make \$20 a day. But Mr. Legatos testified he wasn't on a commission deal, he was on a salary deal. What reason would he have to fill these bottles?

Other than these two reasons, of course, is the third reason, that his employer told him, "Here is a bunch of rum; get rid of it; shove it out to the public; I don't care how you do it."

He had 40 or 50 cases of rum, as his bookkeeper said.

"We have got to get rid of it anyway you can, whether it is put in with Schenley's or what not. Get rid of this rum."

That is the reason. And Mrs. Lewis testified he told her that he was going to tell his managers to get rid of that stuff, to push it, to get it out of the premises. Her testimony was very clear and distinct in that regard. She testified that he said, "I have got 40 or 50 cases here and I am going to move [235] it." He said, "I am going to give each one of my managers so much and ask them to press it in their sales."

He said, "I am going to get rid of this rum and brandy."

That is what she told you. "I am going to get rid of it," he says, "I am overstocked with it."

In other words, when he admits, "I am overstocked," that he can't sell it legitimately, doesn't he?

He says, "I have got too much of it; I can't sell it; so," he says, "I am going to try some new way of marketing this stock of rum."

Isn't that what he said in effect when he says, "I am overstocked; you have got to push it, get it out of the way?" He says, "I am going to try a new way to get rid of the goods."

So what did he do? He had his bartenders put it in whiskey bottles fifty-fifty with whiskey and sell it for whiskey.

Mrs. Lewis was a witness called by the Government. As I stated, she worked—as far as I know maybe she is still employed—I don't know whether she is or not at this time by Mr. Legatos,—she worked for him for five years. She testified on the stand that they were friendly. She had no reason to testify for or against him, apparently, from what she said on the stand, although the day before, as I indicated, she had talked to me about the case, and on the stand when Mr. Brannely asked her, "Does Mr. Legatos operate his business in [236] a lawful manner?" What was her answer? He either does or he doesn't. Yet, what did she do? Do you recall? I am sure we all recall. She sat in that chair for a minute, two minutes—sat there in my sight and your sight wondering what she was going to

say. It took her a long time to think that over, and finally she said, "Yes."

In other words, there were grave doubts in her mind, apparently. It took her a long time to come to that conclusion, and finally she came out with the answer, "Yes."

And then I asked her if she had talked to anyone about this case. She said, "Yes."

I said, "Since you talked to me?"

She said, "Yes."

I said, "Who?"

She said she talked to Mr. Brannely and Mr. Legatos, and, of course, what she talked about so far as Mr. Legatos is concerned I don't know, but at any event her testimony—and the jury is entitled to take the demeanor of a witness into consideration when they are testifying, so that you can weigh what she said, whether her answer be yes or no, and come to your own conclusion as to what she really thought when she was asked that question by Mr. Brannely.

We next had the witness for the defendant, his own witness, Mr. Chris Maritsas, and as I have stated earlier in my argument, he has stated that he did pour out this whiskey, [237] this brandy, rather, into a number of bottles—rum.

However, he, himself, is only there from 4:00 in the afternoon until 12:00 in the evening. He doesn't know whether or not the defendant Tony Legatos came in the morning and put rum out for them to put in the whiskey; take it out of the storeroom or whatnot.

However, the evidence is clear from Mrs. Lewis that this man Tony Legatos kept in close touch with his business. In his office he has an accountant, an auditor, if you will, besides her, and Mrs. Lewis testified herself that he knows from day to day for all practical purposes just what is being sold in these bars. And Mr. Legatos himself said that he goes into his bars very often and he testified that he, himself, kept in close touch with what was going on.

Now that is important from this standpoint, that if he did keep close tab of his business, as he so testifies, and had an auditor and bookkeeper, he would know just about what his sales of whiskey were per day. And do you think, ladies and gentlemen of this jury, that he wouldn't know when 31 bottles in one of his bars was being tampered with? Do you believe that Mr. Legatos would have no idea that they were pushing this rum in their whiskey? Is that reasonable for a man of his caliber, who has an accountant and auditor and is watching his business and going in and out of his bars?

And he talks about a number of other places, 16 or 17 [238] places, restaurants and what not. However, his office is in the Ochsner Building and he says, "I am here most of the time." He said, "I go out of town occasionally, but," he says, "most of the time I am here."

And he is how far from 612 K Street? A block and a half or so. Is it reasonable to suppose that man does not keep tab on that bar?

I believe that the government has proven facts and circumstances from which it is positively cer-

tain by circumstantial evidence for the most part that this man knew what was going on. However, we have from his own lips, from the lips of Mrs. Lewis, that he did have this rum and that he did instruct his managers to move it, and he, himself, conceded that on the stand today. We have the fact that the license is solely in Tony Legatos' name; we have the fact that no one else stood to profit one nickel; there were no partners in this deal whatsoever—he has some partners in other bars, but he, himself, owned this bar solely; he was the sole owner of that business. The other co-defendant had no interest in it.

Don't misunderstand me; I feel there is no question but that the other defendant did fill these bottles, but I feel and I know that Tony Legatos directed him to put this rum into these bottles and to sell it to the public and to sell it as what? To sell it as highballs. [239]

In other words, you come in and order, for instance, a Four Roses drink. The price varies on straight whiskies from Schenley's Black Label. What does he do? He reaches over and gets the Schenley's Black Label bottle and pours a little in the Four Roses bottle and serves it to you.

Of course, that isn't done before your eyes, ladies and gentlemen, that is done early in the morning or late at night, but that is what is done for all practical purposes in this case.

So far as the character witnesses are concerned, he has produced character witnesses, as any businessman might do. So far as Mr. Holmes and Mr.

Zollner knows, so far as I can ascertain, is that Mr. Legatos does his banking at the bank, and I assume that Mr. Zollner makes a little money—when he says he does business, I guess they lend him a little money, and I guess they don't want to hurt Mr. Legatos too much so far as he is concerned he is making a lot of money, I guess there is no question about that, and they have loaned him money, and they will lend him more money. That is what the testimony comes down to to me.

Mr. Holmes, however, said that if he knew what some of the facts and circumstances in this case were, he wouldn't know what his answer would be and he wouldn't say that his reputation as a law abiding citizen was good. However, none of them didn't say anything about his other reputation, outside of the law abiding portion of it. [240]

Summing up in brief—I don't want to bore you with this argument at this time—I don't know what to say as far as the defendant Chris Maritsas is concerned; to me he has admitted the offense; he said, "I filled the bottles," and the Court will instruct you, I am sure, that is against the law to do so, and there can be no question about that in your mind.

As far as the other defendant is concerned, I think the Court will instruct you that the offense charged in this indictment against Tony Legatos is one of that class in which it is not necessary to prove guilty intent.

In other words, I think the Court will instruct you that even though I hadn't produced Mrs. Lewis and even though I couldn't connect this defendant di-

rectly with the crime, that if he owned the bar—and he is the sole owner of that bar—he is licensed to carry on a business in this town, he is in a different position than the average businessman, he is licensed by the United States Government and by the State of California to carry on a lawful business, and when you are licensed to carry on a licensed business you owe a higher duty to the public generally. You are operating under a license and it is your duty to see that this business is carried on in a lawful manner.

I think the Court will instruct you that the defendant, being in the business of selling distilled spirits which have [241] been bottled while in bond, whether conducted by himself or his agents, was bound at his peril to see that there was no reuse of any bottle for the purpose of containing distilled spirits which had once been filled and stamped under the provisions of the act without removing and destroying the stamp previously fixed to such bottle. That if the bottles in question were refilled, they have been reused. I think the Court will so instruct you, and if one of the defendant's agents, acting within the scope of his employment, reused the bottle without removing and destroying the stamp, then the defendant's liability is the same as if he had reused it himself.

I think the Court will instruct you that is the law in this case.

However, in this case the Government has gone one step further: We have produced all the evidence that we could, which is very difficult in this type of case, to show you that as a matter of fact Tony

Legatos himself ordered the moving of the rum; we have shown you that this rum was put in whiskey bottles in a bar a block and a half away from his office; we have shown you that he was in this town and in and out of that bar time and time again; we have shown that this defendant kept very close tab on his business, knew what the sales were, and must have known, as a matter of fact, what was being poured in the drinks in his bar, and we have shown you that [242] the other defendant had absolutely no reason whatsoever to fill these bottles, unless he did so under the direction of the man who made the profit, Tony Legatos, in this case.

Thank you. [243]

CLOSING ARGUMENT ON BEHALF OF THE GOVERNMENT

Mr. Seawell: May it please the Court, counsel, ladies and gentlemen of the jury: I, of course, agree with Mr. Brannely in his closing remarks; no one wants to see an innocent person prosecuted, least of all myself, least of all the Grand Jury, and least of all this jury or the Court, and if we didn't believe that the man was guilty he would not be charged.

We have had investigations by agents and what-not, and the Government is convinced beyond a reasonable doubt, and that is all we are trying to do is present as clearly and impartially as we can that Tony Legatos is the man that made the profit from the pouring of the rum into the whiskey, although he had his agent do the pouring, and as far as I am personally concerned, if the jury sent this donkey

or this man Chris—I mean, found him guilty; what the penalty is is up to the Court—I feel that a great injustice would be done unless they also found the proprietor, the man who made the profit, the big shot, the rich man as Mr. Brannely would have you believe should not be prosecuted—he talks about corporations and whatnot; shouldn't they be prosecuted? Because a man is wealthy, should we dismiss him and simply pick on Chris? Is that the kind of justice that Mr. Brannely is asking that we bring before this Court and before this jury and before this [244] flag?

Our Constitution is based on the principle that every man should be treated equally, and this government still believes that, and this suggestion of Mr. Brannely's about wealthy and rich corporations should not influence this jury or should not influence this judge or influence this United States Attorney's office.

They talk about stamps being on these bottles. Of course the stamps were on there, but the violation of law is that they did not destroy the stamps and go buy a new stamp and then fill the bottle and then put the new stamp on the bottle.

Mr. Kennedy: Just a moment—pardon me——

Mr. Seawell: That is the violation of the law.

Mr. Kennedy: Pardon me.

Mr. Seawell: If they were going to refill them they would have to get a permit from the United States Government to refill those bottles.

Mr. Kennedy: Pardon me, Mr. Seawell, I have a right to be heard. That is not the law. I object to

the statement of counsel that it is the law that the defendants had to go and get a new stamp. They are only charged with not destroying the stamps affixed to the bottles. He isn't quoting the law at all——

Mr. Seawell: I am telling you what my understanding of the law is, and maybe someone else can explain it to you, that [245] before you may refill a bottle of whiskey you must have a permit from the United States Government, and you must have a stamp and attach it thereto after it is refilled.

Mr. Kennedy: Just a moment, I object to that. That is not a law, that is a misstatement of law, and I further object that it is not within the scope of the issues and entirely outside the scope of the issues, and I ask that the jury be asked to disregard the remarks of counsel.

The Court: Overruled.

Mr. Seawell: In this case there is no testimony that any new stamps were attached to these bottles. Mr. Kennedy is talking about revenue. That is where the revenue would be lost. So the fact that a new stamp was not attached after the new liquor was poured into the bottle—and it doesn't matter whether the tax was paid before or paid a dozen times, every time a bottle is filled the liquor that is put in there must have a stamp on it showing that the tax was paid.

Mr. Kennedy brings up the argument, he says it is all right to open a package of cigarettes, and you don't always destroy the stamp. I don't know whether that is the law or not. I never heard of that; I am a cigarette smoker; but I do know that in all

good conscience there would be something wrong if I took a package of Pall Malls or a package of Camels and tore the package open, but left all the stamp on and took out half of those Camels or took out half of the Pall Malls and put in a half a package of a 10c brand of [246] cigarettes, and sold them for Camels or Pall Malls. I know that is wrong myself. I don't have to be told that, and I think the ladies and gentlemen of the jury will understand that is wrong. It is the last step that makes that wrong, when you take out half of the package and put in a different product than is supposed to be there and tell the people here is a new package of Camel cigarettes when half of them are of an inferior brand of cigarettes.

There is the same thing again, is it not? There is the answer to the cigarette argument, I believe.

Mr. Brannely has discussed the law on this, and I would like to discuss, and I have read to you what the law is about the proof of guilt in this case.

It is only necessary to prove this defendant owns and operates the place in question. But we have gone further than that, and we have proven that he has not only given the orders to move this rum and not only given the orders, but the rum was actually found in his bottles and found in his premises. These bottles belong to Tony Legatos. They don't belong to anyone else, ladies and gentlemen. These bottles are his property solely and alone.

Mr. Brannely is talking about the Bill of Rights. The Bill of Rights gave us lots of rights, but there comes a time when there is a limit. There are cer-

tain rules and regulations in Government that must be passed for the protection of all, [247] and the Bill of Rights didn't say anything about it is legal to defraud the People of the United States.

This is an action by the United States for defrauding the United States, and the Bill of Rights didn't say that any one individual has a right to defraud the rest of the population.

Mr. Brannely is talking about Tony's denial. He says, "Why, as soon as Tony"—his inference was it was all one day—"As soon as Tony was told about it he immediately denied it." He said, "I had nothing to do with it."

Well, the fact of the matter is that the agents went to his place of business at 10:00 a.m. or thereabouts on the 18th day of July and they made an appointment to return one day later, some 26 hours later, and when they returned 26 hours later Tony made this denial that he is speaking about. And I imagine that some of his employees in the meantime had contacted him. I don't think that that was the first time that Tony ever knew what the charge was against him. I think he came down there at the request of Chris and he had had plenty of time to think this matter over and to think what he was going to say and who was going to take the rap when they walked in at 12:00 o'clock the next day.

And as far as going into his other bar is concerned on the same day, on the 18th, after they checked his bar, don't you believe that this bartender O'Leary notified the boss, notified Legatos that they had been in there and that they had [248] found what they

thought were refilled bottles—do you think they would find other bottles in his other place after that just a few steps up the street when they went there at 4:00 or 5:00 o'clock? They didn't know whether Legatos owned that or not as far as the record is concerned. They simply were checking all the bars in Sacramento, and there was no evidence that those bottles were not changed in the meantime, that they weren't all new bottles, if you want to go into that.

Mr. Brannely is talking about this reasonable doubt, and the Government wants you to try this case and give every consideration to the defendant, and if you are not satisfied, to bring in your verdict in accordance with your conscience with the evidence, but it is not incumbent upon the jury and it is not incumbent upon the Government in a prosecution to prove to a mathematical certainty, and the Court, I believe, will also instruct you about that, that we can only act as reasonable people, and in this type of cases we can only prove facts and circumstances, and from those facts and circumstances the jury may draw the conclusion as to what actually happened.

And in this case we proved the fact that Tony told him to move the stuff—and, by the way, Mr. Brannely read a part of that testimony, and then when he got to Page 34 he said, "I don't want to read that, that is unimportant," but that is where Tony said—this is what was left out:

"Tony said, 'I am going to get rid of this rum and brandy.' [249] He said, 'I am overstocked on it.' "

To me that is the important part of the testimony. He said, "I am going to get rid of this rum and brandy." And he said, "I am overstocked on it."

He couldn't sell it in highballs, so he pours it into whiskey bottles and sells it that way.

He talks about Mrs. Lewis, why did Mrs. Lewis—Mrs. Lewis came here in answer to subpoena from my office, and she says, "I was duty bound and Legatos was duty bound,"—I am not accusing Mr. Brannely, because I know he is a high type of attorney and I know he couldn't do anything wrong, and he was perfectly within his rights to talk to her—not only Mr. Brannely, but Mr. Legatos talked to her, but before Mr. Brannely talked to her I talked to her, and it wasn't apparently the same story she told me before when she took the stand.

I called that to your attention, when she paused for such a length of time. I think I wouldn't be competent to try a case if it didn't convey something to me. It conveyed something to me, it conveyed something to Mr. Brannely, he said, and it must have conveyed something to you, ladies and gentlemen, when she paused such a length of time before answering the question, if she knew the man conducted his business in a lawful manner.

If you are asked to say something against a person, you might think a long time before you answered to the contrary. [250]

So far as this excuse that they are offering that Mr. Legatos owns a number of businesses—he owns 16 or 17 bars, he can't watch all the bars at all times—well, that is as it may be, but when he took

the responsibility of operating these bars he took on the added duty of operating them in a lawful manner; and if that were not the law, ladies and gentlemen, we would be in a sad predicament.

If I could go out and buy 16 or 17 bars up and down the State in California and hire a manager and put him in there and let him sell water for whiskey and let him put in rum and put in brandy and what not into the whiskey and sell it as Scotch, and then when they go in and arrest my manager in Redding, "Why, no, I don't know anything about it. Gee, that is too bad, isn't it? That is too bad. We will just have to forget that. I wasn't in Redding. I don't know anything about it."

Or when they come to Sacramento about a block from my place of business and they arrest my manager selling rum, and they are selling caramel for Scotch whiskey and what not, I say, "Well, I am sorry, that is just too bad, but don't bother me about it, I am a busy man. I just made myself wealthy that way, but I don't want to be bothered about those trifflles."

That, to me, is a ridiculous argument, and that is why the law is to the contrary and why, of course, it holds a man [251] responsible for his actions.

They bring some question into this case about the profit which was made. Well, it was obvious that he was overstocked, as they say, with rum. He wanted to get rid of that rum and he wanted to get rid of it just as soon as he could work it out through his bars, and whether he made a greater profit by selling that rum in Schenley bottles is immaterial

as far as I can see, and I think that is the most vicious type of argument I can think of to say that because a man is overstocked it is all right for him to sell his product under an assumed name and sell you rum when you think you are buying whiskey. I can't think of a weaker defense than that in all the time I have been practicing law.

I am not going to bore you any further. I think I have presented the Government's side of this case as fairly and impartially as I can, and I feel sincerely and I honestly believe that the man who really carried on this business of forcing these people to sell rum in whiskey bottles and pouring different types of liquor, caramel and what not into straight whiskey bottles, was the proprietor, and they have not advanced, and I have listened with interest to hear it, one reason why Chris would do that; not one reason have they advanced that would appeal to my reason in any way, and I don't believe they have given a reason why he would do it.

He had no reason. He had no interest in the place, and [252] that is why I say to you, ladies and gentlemen, that it must have been the proprietor that gave the instructions; that is why we have shown to you when Mrs. Lewis testified that Tony told her that Tony was going to order his bartenders to shove this stuff and get rid of it, and that is what he did.

I wish to thank you, ladies and gentlemen of the jury, for your attention, and I wish to thank the Court for its courtesies.

The Court: Ladies and gentlemen of the jury,

we will now adjourn until tomorrow morning at 10:00 o'clock. Remember the admonition heretofore given you by the Court.

DEFENDANT'S REQUESTED INSTRUCTIONS
REFUSED BY THE COURT

DEFENDANTS' PROPOSED INSTRUCTION
No. 2

Although the Indictment against the defendants charges violation of certain revenue laws and regulations, the matters for your determination do not have to do with whether or not taxes have been evaded by the defendants. These laws and regulations are designed to protect the revenue, and a charge that one or more of them has been violated does not mean that taxes have been evaded.

Covered in No. 1.

Refused—covered elsewhere.

MARTIN I. WELSH.

Judge. [254]

DEFENDANTS' PROPOSED INSTRUCTION
No. 3

You are instructed that under the first count of the indictment the defendants and each of them are charged with not the violation of a law, but of a regulation of the Bureau of Internal Revenue of the Treasury Department of the United States. These regulations are adopted pursuant to law and have the force and effect of law, but it is an essential ingredient of the violation of a regulation

that the defendants have knowledge of the regulation.

If you therefore find that the defendants or either of them had no knowledge of Section 175.41 of Regulation 13 issued by the United States Treasury Department, Bureau of Internal Revenue, you will find such defendant not guilty.

Constructive knowledge?

Not given.

Federal Register Act.

Not given.

MARTIN I. WELSH,
Judge. [255]

DEFENDANTS' PROPOSED INSTRUCTION
No. 4

Before either defendant may be found guilty under the First Count of the Indictment it is necessary that you find beyond all reasonable doubt that he "wilfully violated" the regulations involved. Wilfullness is made a vital ingredient of the crime by statute, and this means that the defendant must have had a knowledge and a purpose to do wrong.

May be implied?

Not given.

Title 26, Section 2871, U.S.C.

Potter v. United States 155 U. S. 438, 39 L.Ed. 214, 217, 15 Sup. Ct. 149.

People v. Armentrout 118 Cal. App. (Supp) 761, 773, 1 Pac (2d) 556.

Not given.

MARTIN I. WELSH,
Judge. [256]

DEFENDANTS' PROPOSED INSTRUCTION
No. 5

The law does not forbid mixing alcoholic beverages at a bar in advance of sales for consumption or in anticipation of sales for consumption, and if you find that one or both of the defendants mixed alcoholic liquors as charged in the first count of the indictment, but do not find as to such defendant or defendants that these liquors were not mixed in advance of sales or in anticipation of sales for consumption at the bar, it is your duty to return a verdict of not guilty.

Not given.

Regulations 20, Wholesale & Retail Dealers in Liquors, Article VII, Sec. 194.35.

Not given.

MARTIN I. WELSH,
Judge. [257]

DEFENDANTS' PROPOSED INSTRUCTION
No. 6

If you find that the defendant Chris Maritsas mixed or compounded alcoholic liquors in advance of sale for the purpose of filling for immediate consumption on the premises orders received at the bar or in expectation of the immediate receipt of such orders, you will find the defendant not guilty on the first count of the indictment.

No evidence.

Not given.

MARTIN I. WELSH,
Judge. [258]

DEFENDANTS' PROPOSED INSTRUCTION
No. 9

You are instructed that as to the defendant Tony Legatos neither the contents of any of the bottles introduced as exhibits in this case nor any information concerning the contents on these bottles presented to you by the prosecution is evidence against him; and in arriving at your verdict as to defendant Tony Legatos you are to disregard the contents of these bottles and all evidence concerning the condition of the contents of these bottles which was presented to you by witnesses for the government.

Why?

Not given.

MARTIN I. WELSH,
Judge. [259]

DEFENDANTS' PROPOSED INSTRUCTION
No. 10

You may not presume that other persons, even though they were employees, had authority to do a criminal act on behalf of either defendant; and if you find that some or all of the bottles described in the First Count of the Indictment were reused in violation of regulations, but do not find that both of the defendants personally reused the bottle or bottles, then as to each defendant who did personally not reuse any bottles unless you find beyond all reasonable doubt that he directly authorized or consented to the reuse in violation

of regulations, it is your duty to acquit him under the First Count of the Indictment.

Not given.

U. S. v. Grocery Bureau Conspiracy (D. C. of Calif. 1942) 43 Fed. Supp. 966, 971 princ.—does, act, or permits it to be done.

U. S. v. Corlin (D. C. of Calif., 1942, 44 Fed. Supp. 940.)

Not given.

MARTIN I. WELSH,
Judge. [260]

DEFENDANTS' PROPOSED INSTRUCTION No. 23

The regulations of the Secretary of the Treasury of the United States concerning traffic in containers of distilled spirits in effect at the time of the acts charged against defendants, contains the following regulation which governs the reuse of liquor bottles:

“§ 175.14 Reuse of containers. The reuse for packaging distilled spirits for sale at retail of liquor bottles or other authorized marked containers, as defined herein, is prohibited: Provided, That liquor bottles, as defined herein, used for packaging domestic distilled spirits may be reused (a) by the bottler whose permit number is blown therein, (b) by the parent company or wholly-owned subsidiary under the provisions of § 175.11, or (c) by the person acquiring stocks of liquor bottles in the possession of a permittee when any permit is suspended,

revoked, or surrendered, as authorized by § 175.39: Provided, further, That liquor bottles used for packaging imported distilled spirits may be exported for reuse under the provisions of § 175.27.

Sec. 175.14 Regulations of Bureau of Internal Revenue, Treasury Department.

No testimony.

Not given.

MARTIN I. WELSH,
Judge. [261]

Friday, April 12, 1946—10:00 o'clock a.m.

The Clerk: United States vs. Tony Legatos and
Chris Andrew Maritsas.

Mr. Seawell: Ready.

Mr. Brannely: Ready.

Mr. Kennedy: Ready.

CHARGE OF THE COURT

The Court: Members of the jury, it is now my duty to instruct you on the law of this case, and it is your duty, as jurors, to follow the law as given to you in these instructions, and to apply the law thus given you to the facts in evidence before you.

It is the duty of the jury to give uniform consideration to all of the instructions herein given, and to consider the whole and every part thereof together, and to accept such instructions as a correct statement of the law involved.

On the other hand, I charge you that it is your exclusive province to determine the facts in the case and to consider the evidence for that purpose. You are the sole judges of the weight, effect and value of the evidence, and of the credibility of the witness.

The fact that an indictment has been filed against the [178] defendants is not to be considered by you as any evidence of the defendants' guilt. The indictment is merely a legal accusation charging a defendant with the commission of a crime; it is not, however, evidence against any such defendant, and does not create any presumption or inference of the defendants' guilt, and you are not to consider such fact in arriving at your verdict.

The defendants Chris Andrew Maritsas and Tony Legatos are charged with violation of Title 26, United States Code, Section 2871, in that on the 18th day of July, 1945, at a place known as "Golden Tavern", located at 621 K Street, in the City of Sacramento, County of Sacramento, State of California, within said Division and District, did wilfully, knowingly and unlawfully re-use liquor bottles, to-wit, a total of 31 bottles, as follows:

- 12 bottles of four-fifths quart capacity of whiskey, bearing the label of Schenley Reserve Blended Whiskey;
- 2 bottles of four-fifths quart capacity of whiskey, bearing the label of Schenley Reserve Blended Whiskey;
- 3 bottles of four-fifths quart capacity of whiskey,

bearing the label of Four Roses, A Blend of Straight Whiskies;

2 bottles of four-fifths quart capacity of whiskey, [179] bearing the label of Seagram's Seven Crown Blended Whiskey;

2 bottles of four-fifths quart capacity of whiskey, bearing the label of Lord Calvert Blended Whiskey;

2 bottles of four-fifths quart capacity of whiskey, bearing the label of Lord Calvert Blended Whiskey;

2 bottles of four-fifths quart capacity of whiskey, bearing the label of Old Forrester Straight Whiskey;

2 bottles of four-fifths quart capacity of whiskey bearing the label of Old Hermitage Straight Whiskey;

2 bottles of four-fifths quart capacity of whiskey, bearing the label of Seagram's V. O. Blended Whiskey;

2 bottles of four-fifths quart capacity of whiskey, bearing the label of Johnnie Walker Black Label Blended Whiskey,

in violation of the provisions of Section 175.41 of Regulation 13 prescribed by the Secretary of the Treasury in pursuance of the provisions of Title 26, United States Code, Section 2871.

The second count charges that at the time and

place described in the first count of the indictment the defendants did wilfully, knowingly and unlawfully place distilled spirits in 31 bottles which had been stamped and filled without destroying the stamp previously affixed to such bottles, said [180] bottles being listed and described in the foregoing first count of the indictment.

The laws under which the defendants are being prosecuted here are federal laws and are concerned with the conduct of bars, such as the premises where the alleged crimes were committed, only so far as is necessary to protect the revenue of the federal government.

The Court instructs you that it is incumbent upon the prosecution in connection with the second count contained in the indictment that the Government prove beyond a reasonable doubt and to a moral certainty that distilled spirits were placed in certain bottles and that the bottles in which said distilled spirits were placed had upon them revenue stamps which were not destroyed.

In other words, in connection with the second count in the indictment it is not only necessary that the Government prove that the defendants did wilfully and knowingly place distilled spirits in certain bottles, but the Government must further prove that the distilled spirits were placed in bottles without destroying the stamp previously affixed to such bottles. If the Government should fail to prove either one of these elements beyond a reasonable doubt and to a moral certainty, then it is your duty to return a verdict of not guilty on the second count.

You are instructed that whenever in his judgment such [181] action is necessary to protect the revenue, the Secretary of the Treasury is authorized, by the regulations prescribed by him, and permits issued thereunder if required by him (1) to regulate the size, branding, marking, sale, re-sale, possession, use, and re-use of containers (of a capacity of less than five wine gallons) designed or intended for use for the sale at retail of distilled spirits (within the meaning of such term as it is used in Section 2803) for other than industrial use, and (2) to require, of persons manufacturing, dealing in, or using any such containers, the submission to such inspection, the keeping of such records, and the filing of such reports as may be deemed by him reasonably necessary in connection therewith. Whoever wilfully violates the provisions of any regulation prescribed, or the terms or conditions of any permit issued, pursuant to the authorization contained in this section, and any officer, director, or agent of any corporation who knowingly participates in such violation, shall, upon conviction, be punished as prescribed by law.

You are instructed that the first count of the indictment in this case charges the defendant Chris Maritsas with wilfully, knowingly and unlawfully reusing certain liquor bottles.

If you find that the defendant Chris Maritsas did not wilfully, knowingly and/or unlawfully reuse certain liquor bottles, then it is your duty to return a verdict of not [182] guilty as to the defendant Chris Maritsas.

You are instructed that the first count of the indictment in this case charges the defendant Tony Legatos with wilfully, knowingly and unlawfully reusing certain liquor bottles.

If you find that the defendant Tony Legatos did not wilfully, knowingly and/or unlawfully reuse certain liquor bottles, then it is your duty to return a verdict of not guilty as to the defendant Tony Legatos.

Each defendant is presumed to be innocent of the crime charged against him. This presumption of innocence attaches at the beginning of the trial. It has the weight and effect of evidence in each defendant's behalf, and continues to operate in each defendant's favor throughout all the stages of the trial. When you finally retire to the jury room to deliberate upon a verdict, it becomes your duty to consider the evidence introduced in the light of this resumption. This resumption is sufficient to acquit any defendant charged with a crime unless it is overcome by evidence that satisfies your mind to a moral certainty and beyond a reasonable doubt of the guilt of the accused, and unless you, and each of you, are so satisfied, it is your duty to find the defendant not guilty.

It is not necessary for each defendant to prove his innocence; the burden rests upon the prosecution to establish [183] every element of the crime with which a defendant is charged to a moral certainty and beyond a reasonable doubt.

The Court instructs you that under the law no

jury should, nor has it the right, to convict a defendant of a crime upon mere suspicion, however strong, nor simply because there may be a preponderance of all of the evidence in the case against him, nor merely because there is or may be a strong reason to suspect that he is guilty; but before a jury can lawfully convict they must be convinced of the defendant's guilt beyond all reasonable doubt.

A reasonable doubt is a doubt resting upon the judgment and reason of him who conscientiously entertains it from the evidence in the case. It is a doubt based upon reason. By such a doubt is not meant every possible or fanciful conjecture that may be suggested or imagined, but a fair doubt based on reason and common sense, and growing out of the testimony in the case. A reasonable doubt is that state of the case which, after the entire comparison and consideration of all the evidence in the case, leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction, to a moral certainty, of the truth of the charge.

Without it being restated or repeated, you are to understand that the requirement that a defendant's guilt be shown beyond a reasonable doubt is to be considered in connection [184] with and as accompanying all the instructions that are given to you.

The jury are further instructed that mere probabilities are not sufficient to warrant a conviction, nor is it sufficient that the greater weight or preponderance of the evidence supports the allegation

of the indictment, nor is it sufficient upon the doctrine of chances that it is more probable that the defendants are guilty than that they are innocent, to warrant conviction. The defendants must be proven to be guilty so clearly and conclusively that there is no reasonable theory upon which they can be innocent, when all of the evidence is considered together. If anyone, or any number of you, after considering and deliberating upon all the evidence in the case, shall be of the opinion that the defendants have not been proven guilty to a moral certainty and beyond a reasonable doubt, those entertaining that opinion should vote in favor of a verdict of "not guilty," and should so adhere to that opinion until convinced to a moral certainty and beyond a reasonable doubt that they are wrong; and if the jury entertain any reasonable doubt upon any single fact or element necessary to constitute the crime charged, it is your duty to give to the defendants the benefit of such doubt by an acquittal, and return a verdict of "not guilty."

If any facts or circumstances in this case can by any reasonable construction be explained or construed consistently [185] with the innocence of the defendants, it is your duty so to construe them, and if the facts and circumstances and evidence in this case can reasonably be construed as establishing the innocence of the defendants, it is your duty to so construe them and acquit the defendants.

Your are further instructed that if from the facts offered in this case the jury finds that they may draw two equally reasonable conclusions, one of

which points to the guilt of the defendants and the other points to the innocence of the defendants, it is the duty of the jury to adopt that conclusion which is consistent with the innocence of the defendants, and to find them accordingly not guilty. In other words, if you find that the evidence in this case is susceptible to two explanations, one of which would lead you to a verdict of not guilty, and the other of which would lead you to a verdict of guilty, it is your duty under the law to adopt that explanation which would cause you to return a verdict of not guilty.

Every witness is presumed to speak the truth. This rule applies to the testimony of the defendant if he takes the stand in his own behalf as well as to that of any other witness. You are instructed that his testimony is not to be disregarded or discredited or entitled to less weight for the reason that he is the defendant and stands charged of a criminal offense. He is entitled to the same privileges [186] and his testimony is to be weighed by you with the same care and by the same rules as that of any other witness.

You are instructed that Regulation 11 of the U. S. Treasury Department, Bureau of Internal Revenue, relating to bottling of tax paid distilled spirits, Section 189.108, at the time the offense herein alleged was alleged to have been committed read as follows: "The stamp may be affixed over a cup or cap placed over the opening of the bottle, provided the arrangement is such that the stamp will be torn apart or destroyed when the cup or cap is unscrewed or

removed or destroyed. Where it is desired to affix the stamp over a removable cup or cap, the cup or cap must be securely screwed or fastened over the opening of the bottle, and must be of such size or construction that the stamp will pass over the bottle and extend beyond the cup or cap for such length that each end of the stamp may be securely affixed to the surface of the bottle. Any bottler using such a cup or cap must see to it that the stamp is securely affixed, with a strong adhesive, to both the cup or cap and the bottle in such a manner that the stamp will be torn apart when the cup or cap is unscrewed or removed. Where it is desired to affix the stamp over a cup or seal made of cellulose or other similar adhesive material which is so shrunk or otherwise fitted over the neck of the bottle as to be removable without being destroyed, it will not be necessary for the ends of the [187] stamp to be affixed to the surface of the bottle, but the cap or seal and stamp must be so affixed that a portion of each will remain attached to the bottle when it is opened . . .”

In order that a verdict of guilty be found against either of the defendants under the Second Count of the Indictment it is necessary that you find beyond all reasonable doubt that the defendant did place distilled spirits in the bottles, and further find beyond all reasonable doubt that the stamps affixed to these bottles had not been torn apart by removing the caps or stoppers from these bottles or otherwise destroyed at the time this defendant placed distilled spirits in the bottles. If you do not so find on

both of these points, it is your duty to acquit such defendant on the second count.

If you find that the bottles, and each of them, alleged in count 2 of the indictment not to have the stamps destroyed thereon, were of the kind and character as required by Section 189.108 of Regulations 11, and that upon removal of the cup or cap over the opening of the bottle the stamp was torn apart or destroyed and the cup or cap in each instance was removed and the stamps, and each of them, were destroyed, you will find the defendants not guilty on the second count of the indictment.

The Court instructs you that a stamp upon a bottle of distilled spirits, such as those upon the whiskey bottles [188] involved in this case, is destroyed within the meaning of the law when it is torn apart by removing the cap or stopper from the bottle.

You are instructed that no person shall transport, possess, buy, sell, or transfer any distilled spirits, unless the immediate container thereof has affixed thereto a stamp denoting the quantity of distilled spirits contained therein and evidencing payment of all internal-revenue taxes imposed on such spirits.

You are instructed that no material or substance of any kind other than pure water may be added to distilled spirits during the process of bottling in bond, nor may any substance or material be subtracted from the spirits.

You are instructed that it is unlawful to add or subtract any substance or material to any straight whiskey which will alter or change in any way

whatsoever the condition or character of the product.

You are instructed that no liquor bottle or other authorized container shall be re-used for the packaging of distilled spirits except as provided in section 175.14, nor shall the original contents, or any portion of such original contents, remaining in a liquor bottle or other authorized container be increased by the addition of any substance. The exception permitted by Section 175.14 does not apply to this case.

The good character of the defendant, when proven, is [189] itself a fact in the case; it is a circumstance tending in a greater or less degree to establish his innocence, and it is not to be put aside by the jury, in order to ascertain if the other facts and circumstances considered by themselves do not establish his guilt beyond a reasonable doubt.

The Court instructs the jury that good character itself may, in connection with all the evidence, create a reasonable doubt and entitle the defendant to an acquittal.

You are instructed that one who has been personally acquainted with the defendant for a considerable length of time, and who has been in a position where he probably would have heard his reputation talked about, were it a subject of comment, and who has never heard it questioned, is a competent witness to testify to the good character of such person; and the fact that a witness has never heard anything against his character is the most cogent evidence of his good character and reputation, because a man's character does not get

talked about until there is some fault to be found with him. It is the best evidence of his good character that he is not talked about at all.

I charge you that your verdict must be found from the evidence received by this court at this trial alone, and if you have heard rumor or any talk or by chance have read anything in any of the papers concerning this case, during the trial, or if any matters have been referred to or stated during the trial of the case, by counsel, or by witnesses, which matters [190] or testimony was stricken out by the court, I charge you that all such rumor, matters, and testimony should be entirely disregarded by you, and your verdict be based on the testimony in the case received by the court and the law as given you by the Court.

The Court cautions you to distinguish carefully between the facts testified to by the witnesses and the statements made by the attorneys in their arguments, or presentations as to what facts have been or are to be proved. And if there is a variance between the two, you must, in arriving at your verdict—to the extent that there is such variance—consider only the facts testified to by the witnesses; and you are to remember that statements of counsel in their arguments or presentations are not evidence in the case. If counsel, upon either side, have made any statements in your presence concerning the facts of the case, you must be careful not to regard such statements as evidence, and must look entirely to the proof in ascertaining what the facts are.

On the other hand, if counsel have stipulated or

agreed to certain facts, you are to regard the facts so stipulated and agreed to by counsel, as being conclusively proven.

In determining what your verdict shall be, you are to consider only the evidence before you. Therefore, any testimony as to which an objection was sustained by the Court, and any testimony which was ordered stricken out by me, must be [191] wholly left out of account and disregarded.

If you should find that there are discrepancies or inconsistencies existing in the testimony of any witness, or between the testimony of any witnesses, or if you should find yourselves disagreeing over various issues, real or apparent, you should then ascertain whether or not such discrepancies or inconsistencies, or such points of difference affect the true issues in this case. Examine such discrepancies or inconsistencies and such disputed points, and ask yourselves these questions: How does the decision of this, or that, or the other discrepancy or matter in dispute, affect the guilt or innocence of the defendant? Regardless of what may be the truth concerning such discrepancies or inconsistencies, ask yourselves the main question—did or did not the defendant commit the charges as alleged in the indictment? Is such discrepancy or such disputed point material to establish the main and material issue of fact as to the guilt or innocence of the defendant? If they are not material, if the decision of the same is not necessary to enable you to arrive at the truth of the guilt or innocence of the defendant, then such discrepancies or disputed points are

immaterial and minor matters, and you should waste no further time in discussing or considering them.

Each of the parties in this case is entitled to the independent judgment of each juror. The law requires that [192] before a verdict of conviction or acquittal can be rendered, each juror must concur therein. If, therefore, any one, or number of you, after deliberating on the evidence in this case, shall be of the opinion that there is a reasonable doubt as to the guilt of the defendant, those entertaining this opinion should vote in favor of not guilty, and should adhere to such opinion until convinced beyond a reasonable doubt that the defendant is guilty, then it would be your duty to return a verdict of guilty herein.

While, of course, you are to give the matter your individual consideration, and your verdict must express your individual judgment, it is your duty carefully and candidly to consider the reasons and arguments of your fellow jurors, and if, after such consideration, you entertain a reasonable doubt as to the guilt of the defendant, you should vote for acquittal. But if you are convinced beyond a reasonable doubt that the defendant is guilty, then it will be your duty to render a verdict of guilty accordingly. The Court expects you to consider this case fairly and impartially, and to discuss your view frankly with your fellow jurors.

In every crime, there must exist a union or joint operation of act and intent, and for a conviction, both elements must be proven to a moral certainty

and beyond a reasonable doubt. Such intent is merely the purpose or willingness to commit such act. It does not require a [193] knowledge that such act is a violation of law.

However, a person must be presumed to intend to do that which he voluntarily and wilfully does in fact do, and must also be presumed to intend all the natural, probable and usual consequences of his own acts.

You are instructed that the offense charged in this indictment as against Tony Legatos is of that class in which it is not necessary to prove guilty intent. This defendant, being engaged in the business of selling distilled spirits which had been bottled while in bond, whether he conducted it by himself or his agent, was bound at his peril to see that there was no re-use of any bottle for the purpose of containing distilled spirits, which had once been filled and stamped under the provisions of the Act in question, without removing and destroying the stamp previously affixed to such bottle. If the bottles in question were refilled, they have been re-used—if the bottles in question were refilled, they have been re-used. Agents of the defendant Tony Legatos, if one of them acting—I will go over this again.

If the bottles in question were refilled, they have been re-used. If one of the agents of the defendant Tony Legatos, acting within the scope of his employment, re-used the bottle without removing and destroying the stamp, then this defendant's liability is the same as if he had re-used it himself. [194]

A witness may be impeached by the party against

whom he was called, by contradictory evidence; by evidence that he or she had made at other times statements inconsistent with his or her present testimony.

If you believe that any witness has been impeached, then you will give the testimony of such witness such credibility, if any, as you may think it entitled to.

If a witness is shown knowingly to have testified falsely on the trial touching any material matter, the jury have a right to distrust such witness' testimony in other particulars, and in that case you are at liberty to reject the whole of the witness' testimony, except insofar as he has been corroborated by other credible evidence or by facts and circumstances proved on the trial.

The jury are the sole judges of the credibility of the witnesses, and the weight to which their testimony is entitled. A witness is presumed to speak the truth. This presumption, however, may be repelled by the manner in which the witness testifies, by the character of such testimony, or by contradictory evidence. You should carefully scrutinize the testimony given, and in so doing, consider all of the circumstances under which any witness has testified, his or her demeanor, his or her manner while on the stand, his or her intelligence, the relation which he or she bears to the Government or to the defendants, the manner in which the witness might be affected by the verdict and the extent to [195] which he or she is contradicted or corroborated by other evidence, if at all, and every matter that tends reasonably to shed light upon his or her credibility.

If you find that the presumption of truthfulness attaching to the testimony of any witness has been repelled, then you will give the testimony of such witness such credibility, if any, as you may think it entitled to.

There are two classes of evidence recognized and admitted in courts of justice, upon either of which juries may lawfully find an accused guilty of crime. One is direct or positive testimony by an eye witness to the commission of the crime; and the other is proof in evidence of a chain of circumstances pointing sufficiently strong to the commission of the crime by the defendants and which is known as circumstantial evidence.

The law in regard to circumstantial evidence is this:

In order to justify a jury in finding a verdict of guilty based on circumstantial evidence, the facts and circumstances must not only be consistent with each other and with the guilt of the defendants, but they must be inconsistent with any reasonable theory of the defendants' innocence that can be predicated on the evidence and must show the defendants' guilt beyond a reasonable doubt.

In other words, not only must each fact relied upon to show guilt be proved beyond a reasonable doubt, but such fact must be consistent with all the other facts introduced [196] in the chain of circumstances, and must further be inconsistent with any other rational conclusion than that of the guilt of the defendant.

It is your duty as jurors to try this case as to the

facts, upon the evidence introduced at the trial; and upon the law as given you by the Court in these instructions. The Court, however, has not attempted to embody all the law applicable to the case in any one of these instructions, but in considering any one instruction, you must construe it in the light of and in harmony with every other instruction given, and so considering and so construing, apply the principles in it enunciated to all the evidence admitted upon the trial.

The indictment contains two counts against two defendants.

Each count must be considered by you as a separate and several charge against each defendant and each defendant is entitled to have each count against him in the indictment considered separately and severally from the charge or charges against the other defendant, and, according to such view as you may take of the evidence, you shall return a verdict of either guilty or not guilty on each count as to each defendant.

Your verdict in each instance must be unanimous.

When you retire to your jury room to deliberate, you will select one of your number as foreman and he will sign your verdict for you, whereupon you will return into court [197] with the same. Your foreman will represent you as your spokesman in the further conduct of this case in this court.

The Clerk will hand you the form of verdict.

Any exceptions?

Mr. Seawell: None for the Government.

Mr. Kennedy: Yes, your Honor.

The Clerk: Excuse the jury to the witness room while he makes his exceptions.

Members of the jury, will you please go to the witness room? The Marshal will take you there until we call for you.

(Thereupon the jury retired from the court room.)

The Clerk: All right, Mr. Kennedy, you may make your exceptions.

Mr. Kennedy: Your Honor, at this time we take—make the following objections to the Court's failure to give the defendants' proposed instruction number 4, which was, "Before either defendant may be found guilty under the first count in the indictment, it is necessary that you find beyond all reasonable doubt that he wilfully violated the regulations involved. Wilfulness is made a vital ingredient of the crime by statute, and this means that the defendant must have had a knowledge and purpose to do wrong."

We also take exception to the Court's failure to give the defendants' proposed instruction number 3 which sets out the portion of the regulations, Section 175.14 of Regulation [198] 13, which contains the exceptions to 175.41.

In connection with the instructions given by the Court, an exception is made, and the following objections are pointed out to this instruction:

"You are instructed that no person shall transport, possess, buy, sell, or transfer any distilled spirits unless the immediate container thereof has affixed thereto a stamp denoting the quantity of the

distilled spirits contained therein and evidencing payment of all internal revenue taxes imposed on such spirits."

The exception that is taken upon such instruction and the objection made is that the section contains the following exceptions which have not been enunciated by the Court to the jury, the provisions of subdivision 1, which excepts distilled spirits placed in a container for immediate consumption on the premises or for preparation for such consumption, and subdivision number 3 excepts from the operation of the section distilled spirits placed in containers required to be stamped under existing law.

Exception is taken to the giving of Regulation 188.57 relating to the additions or—prohibited additions of substances of any kind that may be added to distilled spirits during the process of bottling in bond. To the particular instruction the objections are made that Regulation 6 is a regulation controlling distillers, and, precisely, that the [199] provisions of Section 2871, under which the defendants are being charged in the first count, require that the regulation be passed under Section 2871, and the only regulations passed by the Secretary of Treasury or the Alcohol Tax Unit under 2871, the bottling regulations are those which are contained in Regulation number 13; that regulation 6, more specifically Section 188.57 of Regulation 6, was not passed under 2871, and does not relate to the offense in question.

The same objection is made to the instruction given by the Court that it is unlawful to add or sub-

tract any substance or material to any straight whiskey which will alter or change in any way whatsoever the condition or character of the product. This was not a regulation that was passed under the provisions of Section 2871; the only regulation passed under Section 2871 are Regulations number 13, which are complete in and of themselves, and this particular section number 22 of regulation 5 does not apply to the offense in question.

To the instruction given relative to the provisions of Regulation 175.41 of Regulation 13, the exception is made that the instruction as to the exceptions contained in 175.14 were proposed and not given.

The Court: These are motions that you are making?

Mr. Kennedy: Pardon me?

The Court: These are motions that you are making? [200]

Mr. Kennedy: Yes, your Honor. The rules state that the objections shall be made to the Court prior to the time the jury retires, and it is under the provisions of Rule 30 that these objections are made.

May I have just a second to check our proposed instructions, your Honor?

The Court: Motions denied.

Mr. Kennedy: Pardon me?

The Court: I say, motions denied.

Mr. Kennedy: Mr. Brannely desires to join in that motion.

Mr. Brannely: Your Honor, in order to save the time of the Court, without reiterating the exceptions stated by Mr. Kennedy, on behalf of the defendant

Tony Legatos we adopt the same exceptions made by him, and in addition to that we take exception to the instruction in which the jury was instructed that the offense charged in his indictment as against Tony Legatos is of that class in which it is not necessary to prove guilty intent. The defendant being in the business of selling distilled spirits which had been bottled while in bond, whether he conducted it by himself or his agents, was bound at his peril to see that there was no re-use of any bottle for the purpose of containing distilled spirits which had once been filled and stamped under the provisions of the act in question without removing and [201] destroying the stamp previously affixed to such bottle.

If the bottles in question were refilled, they have been re-used. If one of the agents of the defendant, Tony Legatos, acting within the scope of his employment, re-used the bottle without removing and destroying the stamp, then this defendant's liability is the same as if he had re-used it himself.

And to that instruction, in addition to those made by Mr. Kennedy, your Honor, we take exception.

The Court: Denied.

(Thereupon, at 10:46 o'clock a.m. the jury returned to the court room and retired to the jury room to deliberate upon their verdict.)

(The jury returned into the court room at 2:10 o'clock p.m., whereupon the following proceedings were had:)

The Court: Call the roll of jurors, Mr. Clerk.

(Roll called.)

The Clerk: They are all present.

The Court: Ladies and gentlemen of the jury, I have from Mr. Sellers, the foreman, the following, quote:

"Judge Welsh: Your instruction to the jury with reference to the responsibility of an employer for the acts of employee is not clear to all of the jurors.

"Respectfully, N. M. Sellers, Foreman."

My answer is this, from instruction number 6:

"You are instructed that the offense charged in this indictment as against Tony Legatos is of that class in which it is not necessary to prove guilty intent. This defendant being engaged in the business of selling distilled spirits, which had been bottled while in bond, whether he conducted it by himself or his agents, was bound at his peril to see that there is no re-use of any bottle for the purpose of containing distilled spirits which had once been filled and stamped under the provisions of the Act in question without removing and destroying the stamps previously affixed to such bottles. If the bottles in question were refilled, they have been re-used. If one of the agents of the defendant, Tony Legatos, acting within the scope of his employment, re-used the bottle without removing and destroying the stamp, then this defendant's liability is the same as if he had re-used it himself."

You may now retire.

(Thereupon the Jury retired at 2:15 o'clock p.m., and returned into Court at 4:55 o'clock

p.m., at which time the following proceedings were had:)

The Court: Call the roll of jurors.

(Roll called.)

The Clerk: They are all present, sir. [203]

The Court: There was presented to me the following:

“Judge Welsh: We previously asked you can an employer be held responsible for the acts of an employee. Your answer was that an employer can be held responsible for the acts of an employee. We now wish to ask is an employer responsible for the acts of an employee, even if the employee violates the law against the knowledge and consent of the employer?”

“Respectfully, N. M. Sellers, Foreman.”

Mr. Foreman, will you please state numerically, without divulging which way either for conviction or acquittal, how you now stand?

Juror Sellers: We stand eleven to one, your Honor.

The Court: The answer is this:

You are instructed that the offense charged in this indictment as against Tony Legatos is of that class in which it is not necessary to prove guilty intent. This defendant being engaged in the business of selling distilled spirits which had been bottled while in bond, whether he conducted it by himself or his agents, was bound at his peril to see that there was no re-use of any bottle for the purpose of containing distilled spirits which had once been filled and stamped under the provisions of the

Act in question without removing and destroying the stamp previously affixed to such bottle. [204]

If the bottles in question were refilled, they have been re-used. If one of the agents of defendant Tony Legatos, acting within the scope of his employment, re-used the bottle without removing and destroying the stamp, then this defendant's liability is the same as if he had re-used it himself.

Mr. Brannely: Your Honor, at this time——

Mr. Seawell: Just a moment. Any motion?

The Court: Denied. You may now retire.

(The jury commenced to retire from the court room.)

Mr. Brannely: Your Honor——

Mr. Seawell: Just a moment——

The Court: Wait a minute. Do you understand?

(The jury retired from the court room.)

The Court: Now, what do you wish to say?

Mr. Brannely: I believe, your Honor, under the new rules of procedure here, that before the jury retires we are to state our objection or our exception to the instruction of law that your Honor has just read the jury, and in that connection there is another instruction which would answer the identical question that the jury has asked, your Honor, which is Instruction Number 8, which has been read to the jury, which is defendant Tony Legato's Instruction number 8, and that also would answer the identical question that was asked by the Jury, and I want to call the Court's attention to that so that the Court

could also instruct the jury in connection with the language of that instruction. [205]

Mr. Seawell: Of course, that section refers to the situation as this morning after the instructions were given by the Court, the jury retired and you then made your exceptions, and the Court overruled them. The jury has asked for an instruction to be repeated, which the Court has done. There is nothing wrong with that procedure.

Mr. Brannely: I am proceeding under Section 30 of the new rules, which provide that "No party may assign as error any portion of the charge or omission therefrom, unless he objects thereto before the jury retires."

Mr. Seawell: That is right, when the jury retires originally. This jury retired at 10:45 this morning.

Mr. Kennedy: I would like to add to that that the new rules provide that the defendant has a right to—that if the defendant has any exceptions to any instructions, that the defendant has a right to be heard by the Court, and if he has any additional instructions that he desires to propose, and there are additional instructions given by the Court—for instance, the instruction on intent—that Act and intent is an essential part—as I interpret the question asked by the Jury, is an essential part of the instructions to the jury, and I think in all fairness to the defendants that the instructions should be reread to the jury which were read this morning in the way of our instructions in connection with intent, and particularly the instruction that the

jury [206] must find intent before the defendants can be convicted.

Mr. Seawell: Of course, if your Honor follows that to the logical conclusion, we would try this case all over again.

The Court instructed the jury this morning at quarter to eleven, and they took their exceptions, and then the jury came back and asked for the instruction which your Honor gave them, and I think that is all there is to it, unless we are to try this case again at this point.

The Court: Let it stand as it is.

Recess to await the verdict of the jury.

(Recess.)

(The jury returned into the court room at 5:10 o'clock P.M., whereupon the following proceedings were had:)

The Court: The clerk will call the roll of jurors.

(Roll called.)

The Clerk: They are all present, sir.

The Court: Have you agreed upon a verdict, Mr. Foreman?

Juror Sellers: We have, your Honor.

The Court: Please pass it to the Marshal.

(The verdict was handed to the Marshal, who handed it to the Court.)

The Court: Record the verdict.

The Clerk: Ladies and gentlemen of the jury, harken to your verdict as it stands recorded: [207]

"We, the jury, find as to the defendants at the

bar as follows: Chris Andrew Maritsas, guilty on the first count, not guilty on the second count; Tony Legatos, guilty on the first count, not guilty on the second count.

“N. M. Sellers, Foreman.”

So say you all, ladies and gentlemen?

Jurors: Yes.

Mr. Brannely: We would like to have the jury polled, your Honor.

(The jury was polled, all answering it was their verdict.)

I hereby certify that the foregoing 208 pages comprise a full, true and correct transcript of the testimony and proceedings in the case of United States of America, Plaintiff, vs. Tony Legatos and Chris Andrew Maritsas, Defendants, number 9522, on April 9th, 10th, 11th and 12th, 1946.

Dated Sacramento, California, this 22nd day of April, 1946.

/s/ CLARENCE F. WIGHT,

U. S. District Court Reporter.

[Endorsed]: May 15, 1946. [208]

Wednesday, April 17, 1946

2:00 o'clock p.m.

PROCEEDINGS AT TIME OF JUDGMENT

(The defendant, Tony Legatos, was in court, represented by his attorney, John L. Brannely, Esq.)

(The defendant, Chris Andrew Maritsas, was present in court, represented by his attorney, Anthony J. Kennedy, Esq.

(The Government was represented by Emmet J. Seawell, Esq., Assistant United States Attorney.)

The Clerk: United States vs. Tony Legatos and Chris Andrew Maritsas.

The Court: Tony Legatos, are you ready for judgment and sentence?

Mr. Brannely: Yes, your Honor.

The Defendant: Yes.

The Court: Do you wish to say anything to the Court before the Court pronounces judgment and sentence on you?

The jury having found you guilty on the first count of the indictment it is the judgment and sentence of the Court that you, Tony Legatos, be imprisoned in the Federal Penitentiary for a period of two years, and that you pay a fine to the United States of America in the sum of \$1,000, and if such fine is not paid it is ordered that you be imprisoned until such fine is paid or until you are otherwise discharged [262] as provided by law.

Chris Andrew Maritsas, are you ready for judgment and sentence?

Do you wish to say anything to the Court—Do you speak English?

Mr. Seawell: Do you wish to say anything to the Court?

The Defendant Maritsas: No.

The Court: The jury having found you guilty on the first count of the indictment, it is the judg-

ment and sentence of the Court that you, Chris Andrew Maritsas, be placed on probation for a period of three years and that you pay a fine to the United States of America in the sum of \$500. If such fine is not paid it is ordered that you be imprisoned until the payment of such fine or until you are discharged as provided by law. Remanded.

Mr. Brannely: Your Honor, may I make a statement on a motion to reconsider the judgment on behalf of the defendant Tony Legatos at this time?

The Court: Denied.

Mr. Brannely: Well, may I make a statement to your Honor, please, in connection with it?

This defendant, Tony Legatos, your Honor, has never before been in any difficulty whatsoever, and your Honor appreciates under the evidence here with the way the jury was instructed it could not have been any act of Tony [263] Legatos in connection with this.

The extreme penalty, your Honor, is being meted out to a man here that I sincerely think had absolutely nothing to do with the offense itself. Would your Honor reconsider that and make it a two-year probationary period instead of a two-year penitentiary sentence?

There have been many, many cases of this nature in the State of California and in each case one of them a fine has been assessed——

Mr. Seawell: That is not true, Mr. Brannely. In San Francisco they have sentenced many men—several to jail.

Mr. Brannely: But I want to say this: No em-

ployer where the question of intent has been raised has ever come to my knowledge where he has served a term in the penitentiary for this offense.

Your Honor, I believe in fairness to the defendant and as a matter of justice that the defendant, Tony Legatos, could be placed on probation for those two years instead of the sentence to the Federal penitentiary. Your Honor, I think the penalty is very, very harsh in connection with that and I ask your Honor to reconsider that so that justice will be done in this matter.

The Court: Denied.

Mr. Kennedy: Your Honor, at this time I believe the [264] rules contemplate on the taking of appeal where the defendant elects not to serve the sentence that the defendant shall be admitted to bail. I don't think it can be denied in this case that Tony Legatos, insofar as the instruction was concerned, has a substantial question of law, and an appeal is to be filed this afternoon. For the purpose of conserving the time of the Court, may we now make an oral motion for bail?

The Court: Denied.

Mr. Kennedy: Am I led, your Honor, to reason from that that if bail is applied for later it will be denied?

The Court: Denied, yes.[265]

I hereby certify that the foregoing pages, numbered from 209 to 265, comprise a full, true and correct transcript of the proceedings had on the Motion to Suppress, the opening and closing ar-

guments of the Government, Defendants' requested instructions refused by the Court and the proceedings at time of judgment in the case of United States of America, Plaintiff, vs. Tony Legatos, No. 9522.

/s/ CLARENCE F. WIGHT,

Official Reporter, U. S. Dist.
Court.

Dated: May 13, 1946.

[Endorsed]: Filed May 15, 1946. [266]

[Endorsed]: No. 11307. United States Circuit Court of Appeals for the Ninth Circuit. Tony Legatos, Appellant, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Northern District of California, Northern Division.

Filed May 17, 1946.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

United States Circuit Court of Appeals,
Ninth Circuit

No. 11307

TONY LEGATOS,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

STATEMENT OF POINTS ON WHICH AP-
PELLANT INTENDS TO RELY ON
APPEAL.

Appellant, Tony Legatos, proposes on his appeal to the Circuit Court of Appeals for the Ninth Circuit, in the above-entitled action, to rely on the following points as error:

1. The court erred in denying the motion to quash the first count of the indictment.
2. The court erred in denying defendant's motion to suppress evidence and return property.
3. The court erred in admitting over objection, testimony based on an unlawful search and seizure.
4. The court erred in admitting into evidence over objection, bottles and the contents thereof, obtained through unlawful search and seizure.
6. The court erred in admitting into evidence without proper foundation, over objection, bottles and their contents.

6. The court erred in admitting, over objection, testimony as to the statement of a co-defendant prior to the establishment of the corpus delicti.

7. The court erred in admitting over objection, hearsay testimony and opinion evidence of the Government witness, Laverne Lewis, and in allowing the Government attorney to cross-examine such witness.

8. The court erred in denying defendant's motion for judgment of acquittal at the close of the Government's case.

9. The court erred in denying defendant's motion for judgment of acquittal at the close of the taking of testimony in the case.

10. The court erred in instructing the jury:

(a) By giving inconsistent instructions;

(b) By instructing the jury that Section 2871 of the Internal Revenue Code required no intent to constitute a violation;

(c) By instructing the jury that irrespective of the lack of knowledge of defendant as an employer the defendant could be held criminally liable for the acts of his employee;

(d) By instructing the jury on Treasury Department Regulations, namely, Section 188.57 of Regulation 6, and Section 22 of Regulation 5.

11. The court erred in refusing to instruct the jury:

(a) That the jury, in order to find the defendant guilty under the first count, must find that the

defendant wilfully violated Section 175.41 of Regulation 13;

(b) That the contents of bottles introduced into evidence were not evidence against the defendant;

(c) That an employer was not criminally responsible for the acts of his employee unless the employer authorizes such acts.

12. The court erred in denying defendant's motion for a new trial or in the alternative a judgment of acquittal.

The foregoing statement of points to be relied upon on appeal does not designate the parts of the typewritten record appellant thinks necessary for the consideration of such points, for the reason that the entire record is being printed and the specification of error and the briefs to be subsequently filed in the above-entitled appeal will show by reference to the printed record the portions thereof necessary for consideration of the foregoing points.

/s/ JOHN L. BRANNELLY.

/s/ ERNEST TORREGANO.

/s/ ANTHONY J. KENNEDY.

Attorneys for Appellant.

Due service of a copy of the foregoing is hereby admitted this 23rd day of May, 1946.

FRANK J. HENNESSY,

U. S. Attorney.

By /s/ EMMET J. SEWELL, by Dfs.

Assistant U. S. Attorney.

[Endorsed]: Filed May 28, 1946. Paul P. O'Brien, Clerk.

At a Stated Term, to wit: The October Term, 1945, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Monday, the twenty-ninth day of April, in the year of our Lord one thousand nine hundred and forty-six.

Present: Honorable Clifton Mathews, Circuit Judge, Presiding. Honorable William Healy, Circuit Judge. Honorable Wm. E. Orr, Circuit Judge.

[Title of Cause.]

ORDER GRANTING MOTION OF APPELLANT FOR ADMISSION TO BAIL PENDING APPEAL.

Ordered Motion of Appellant for admission to bail pending appeal, filed April 20, 1946, argued by Mr. Anthony J. Kennedy, counsel for the appellant, and by Mr. Emmett J. Seawell, Assistant United States Attorney, counsel for appellee, and submitted to the Court for consideration and decision.

It is Further Ordered that the said motion be, and hereby is granted, and that the appellant be admitted to bail in the sum of \$5000, said bond to be approved by the trial Judge, and Bond to be filed with the Clerk of the District Court for the Northern District of California, Northern Division.

It Is Further Ordered that the appellant may deposit said sum of \$5000 with the Clerk of the said District Court, in lieu of Bond.

